TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. ~~640~~ 252.

D. WAGONER AND W. T. WAGONER, COPARTNERS UNDER THE FIRM NAME OF D. WAGONER & SON, AND S. B. BURNETT, APPELLANTS,

vs.

NEIL W. EVANS, TREASURER OF CANADIAN COUNTY; J. N. CANON, SHERIFF OF CANADIAN COUNTY, ET AL.

FILED OCTOBER 26, 1896.

No. ~~650~~ 262.

NEIL W. EVANS, TREASURER OF CANADIAN COUNTY; J. N. CANON, SHERIFF OF CANADIAN COUNTY, ET AL., APPELLANTS,

vs.

D. WAGONER AND W. T. WAGONER, COPARTNERS UNDER THE FIRM NAME OF D. WAGONER & SON, AND S. B. BURNETT.

FILED NOVEMBER 21, 1896.

(16,419 & 16,435.)

(16,419 & 16,435.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 640.

D. WAGONER AND W. T. WAGONER, COPARTNERS UNDER THE FIRM NAME OF D. WAGONER & SON, AND S. B. BURNETT, APPELLANTS,

vs.

NEIL W. EVANS, TREASURER OF CANADIAN COUNTY; J. N. CANON, SHERIFF OF CANADIAN COUNTY, ET AL.

FILED OCTOBER 26, 1896.

No. 656.

NEIL W. EVANS, TREASURER OF CANADIAN COUNTY; J. N. CANON, SHERIFF OF CANADIAN COUNTY, ET AL., APPELLANTS,

vs.

D. WAGONER AND W. T. WAGONER, COPARTNERS UNDER THE FIRM NAME OF D. WAGONER & SON, AND S. B. BURNETT.

FILED NOVEMBER 21, 1896.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 23, 1896.

1 Be it remembered that among the records, pleadings, orders, judgments, and other proceedings had, taken, and rendered in the supreme court of the Territory of Oklahoma was the petition in error of Neil W. Evans, treasurer of Canadian county, Oklahoma Territory, *et al.*, plaintiffs in error, against D. Wagoner & Son *et al.*, defendants in error, and the petition of D. Wagoner & Son *et al.*, plaintiffs in error, *vs.* Neil W. Evans *et al.*, defendant- in error, and that the following is a full, true, and complete transcript of all the records, papers, and proceedings in that case in said supreme court:

2 In the Supreme Court of the Territory of Oklahoma.

NEIL W. EVANS, Treasurer of Canadian County, Oklahoma Territory, *et al.*, Plaintiffs in Error,
vs.
D. WAGONER *et al.*, Defendants in Error.

Petition in Error.

Comes now the said Neil W. Evans, etc., *et al.*, plaintiffs in error, and complain of the said defendants in error, for that the said defendants in error, at the April, A. D. 1896, term of the district court of Canadian county, Oklahoma Territory, by the consideration of said court, recovered a judgment against the said Neil W. Evans, treasurer of Canadian county, *et al.* in a certain action then pending in said court, wherein the said D. Wagoner and Son *et al.*, defendants in error, were plaintiffs and the said Neil W. Evans, etc., *et al.* were defendants. A certified transcript of the records of said court in said cause is filed herein in this court, and the said Neil W. Evans, etc., *et al.* avers—

That there is error in the said record and proceedings, in this, to wit:

First. That said court erred in overruling the demurrer to the petition in said cause.

Second. That said court erred in rendering judgment for the defendants in error.

Wherefore the plaintiffs in error pray that said judgment be reversed, vacated, set aside, and held for naught, and that plaintiffs in error be restored to all rights they have lost by the rendition of said judgment, and for such other and further relief as to the court may seem just.

THOS. R. REID, *Co. Att'y.*
W. W. BUSH,
Att'y for Pl'ffs in Error.

Endorsement: # 473. Neil W. Evans, treas. Canadian Co., *et al.*, plaintiffs in error, *vs.* D. Wagoner & Son *et al.*, defendants in error. Petition in error. Filed June 3rd, '96. Edgar W. Jones, clerk supreme court. Thos. R. Reid, Co. att'y. W. W. Bush, att'y for pl'ffs in error.

3 TERRITORY OF OKLAHOMA:

In the Supreme Court.

D. WAGONER *et al.*, Plaintiff- in Error,
vs.
NEIL W. EVANS *et al.*, Defendants in Error.

D. Wagoner and W. T. Wagoner, who are copartners in business under the firm name of D. Wagoner & Son, and S. B. Burnett, plaintiffs in error, complain of Neil W. Evans, as treasurer of Canadian county, Oklahoma Territory, and J. M. Cannon, as sheriff of said county, and J. A. Osborn, W. H. Hutchinson, and H. B. Vasey, as county commissioners of said county and as board of county commissioners of said county, and say—

That in this cause in the court below judgment was rendered as more fully appears at page 28 of the case made of the record and proceedings in said case, hereto attached and marked Exhibit "A" and made part of this petition in error, and that there is error in the said record and proceedings, in this, to wit:

First. The court erred in overruling plaintiffs' motion for a new trial.

Second. The court erred in holding in said judgment that the plaintiffs were liable for the taxes levied for territorial and judicial purposes for the year 1895.

Third. The court erred in holding that the statute of Oklahoma under which said taxes were levied was not invalid for want of uniformity.

Fourth. The court erred in holding that the cattle of the plaintiffs in error held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation under the statute of the Territory.

Fifth. The court erred in holding that the cattle of these plaintiffs in error held by them in the Comanche reservation under leases from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation for the judicial expenses of Canadian county.

Sixth. The court erred in holding that the cattle of these plaintiffs in error held by them in the Comanche reservation under leases from the Comanche tribe of Indians, under the treaties and laws of the United States, *was* liable to taxation for the territorial expenses of Oklahoma Territory.

Seventh. The court erred in holding that, while the general taxing statute of the Territory made cattle taxable on the first day of February, the statute of 1895 could lawfully make the cattle in the reservation attached for judicial purposes to Canadian county taxable on the first day of May.

Eighth. The court erred in holding that, while the general taxable statute of the Territory made cattle in the Territory generall- taxable on the first day of February, a statute making cattle in part of the

Territory taxable on the first day of May was not special legislation and invalid.

Ninth. The court erred in holding that a tax such as that in question which would, as averred in the complaint and admitted by the answer, largely decrease, if not destroy, the rentals, employment, and education as hardsmen which the Indians could and do get under said leases of their tribal lands would not injuriously damage or infringe upon the rights of the Indians, under the treaties and laws of the United States, to the lands of the said reservation set apart to their absolute and undisturbed use and occupation, and did not disturb such use *of* occupation or make the same less absolute.

Wherefore plaintiff- in error prays that so much of the judgment of the court below as holds plaintiffs liable for the levies of taxes for territorial and judicial purposes for the year 1895 be reversed and judgment rendered by the court that plaintiffs are not liable therefor and enjoining the defendants in error from proceeding further to collect the same or any part thereof.

And plaintiffs in error pray for all other relief proper in the premises.

W. W. FLOOD,
HORACE SPEED,
Attorneys for Pl'ffs in Error.

4 TERRITORY OF OKLAHOMA, } *ss:*
Canadian County, }

In the District Court.

D. WAGONER *et al.* }
vs. } No. 1159.
NEIL W. EVANS *et al.* }

Be it remembered that on the 18th day of November, 1895, plaintiffs filed in this court their petition, which is in words and figures as follows, to wit:

TERRITORY OF OKLAHOMA, }
Canadian County. }

In the District Court.

D. Wagoner and Son, a firm of copartners, composed of D. Wagoner and W. T. Wagoner, doing business under the above firm name, and S. B. Burnett, for themselves and such other parties as may desire to become parties hereto, upon obligating themselves to incur and become liable for a just and equitable portion of the expenses and costs incident hereto, complain of Neil W. Evans, as treasurer of Canadian county, Oklahoma Territory, and J. M. Cannon, as sheriff of said county, and J. A. Osborn, W. H. Hutchinson, and H. B. Vasey, as county commissioners of said county and as the board of county commissioners of said county, and for cause would

show to the court that heretofore, to wit, on the 21st day of October, 1867, a treaty was concluded between the United States of America and the Kiowa and Comanche tribe- of Indians, and the same was ratified by the Senate of the United States and afterwards duly proclaimed as a valid treaty by the President of the United States; that the same has ever since been and is now in full force and effect; that according to the provisions of said treaty a certain and specific area of country was set apart by metes and bounds as a reservation for the use and behalf of said Indians, and that this identical area has subsequently been embraced within the present limits of Oklahoma Territory, as well as that area of country known and desi*h*nated as the Wichita reservation, and that said areas were specifically and particularly set apart as reservations, and the former for the "absolute and undisturbed use and occupation" of the aforenamed tribes and for such other friendly tribes or individual Indians as from time to time said tribes might be willing and content to admit among them.

That the Government of the United States by said treaty stipulated and agreed with said Indians that no persons other than those Indians by said treaty authorized and such officers, agents, and employés of the Government as might be authorized to enter upon said reservation in discharge of duty enjoined by law should ever be permitted to pass over, stay upon, or reside in the territory so described and set apart for the use of said Indians; that by said treaty all the lands embraced in the area constituting said reservation were set apart and dedicated to the "absolute and undisturbed use and occupation" of the respective tribes and persons aforesaid.

That under the organic act of the Territory of Oklahoma all the *rites* of the Indian tribes under treaties then in force on reservations within the limits of said Territory were continued to the Indians thereon; that, amongst other things, said organic act provided that the governor of Oklahoma Territory should designate the county lines of the different counties therein specified, and that the supreme court of said Territory should attach to the organized counties for judicial purposes the territory not embraced in organized counties.

The organic act further authorized the governor of said
5 Territory to divide each county into election precincts and into such other political subdivisions, other than school districts, as might be required by the laws of the State of Nebraska by such act put in force in Oklahoma Territory, and appoint officers to such counties and subdivisions thereof as he might deem necessary.

That the supreme court of said Territory, pursuant to such act, attached the Kiowa and Comanche reservation for judicial purposes to the county now known as Canadian county; that said Kiowa and Comanche reservation was not included by the governor of the Territory in any election precincts or other political subdivision of the county, nor has it or any part thereof ever been included within any election precinct, school district, or other political subdivision

of any county in said Territory, and said reservation has not had by election or appointment any officers within its area, nor has there been any political subdivision of its area, nor school district, nor election precinct, nor has any elective franchise been vouchsafed to any persons within its area.

That said Kiowa and Comanche tribes are now and ever have been since said treaty in the "absolute and undisturbed use and occupation" of said reservation, as by law they are entitled to be.

That under such possession, use, and occupation said tribes and the individual members thereof have large herds of cattle and horses upon said reservation; and they have also leased under the authority of the Government of the United States and the approval of its proper officers portions of said reservation to these plaintiffs, by proper contracts entered into between these plaintiffs and said Indians, approved by the proper officers of the United States in pursuance of said treaty and the act of Congress in reference to the leasing of lands within said reservation; that long prior to the passage of said act of Congress these plaintiffs had been making similar leases of lands in said reservation for grazing purposes, and had been using the same as tenants and lessees of and under said Indians; that under these existing contracts these plaintiffs have now upon the respective portions of said reservation so leased by them many thousand head of cattle and large numbers of horses and other property necessary for the management and handling of said cattle and horses upon said reservation.

That the value of said cattle and horses aggregate a great many thousands of dollars; that plaintiffs have no property in said reservation save and except as aforesaid; that these plaintiffs have used and occupied the respective portions of said reservation so leased by them mainly for the purpose of grazing and herding their respective herds of cattle thereon, as well as the horses owned and used by them within said reservation; that they pay semi-annually for the respective portions of said reservation so leased by them large sums of money, and, in the aggregate, annually not less than forty thousand dollars in cash.

That in addition thereto and in pursuance of said contract with said tribes of Indians these plaintiffs employ and use in herding, managing, and grazing their respective herds of cattle in the lands so leased by them a large number of Indians, men who are now and have been for a long time in their employ in this capacity, and to whom they pay regularly such wages as are given and paid by them to the most proficient employés experienced in this character of service, and infinitely superior in proficiency and capacity in this character of service to the said Indian men so employed by them.

That the United States authorities who are authorized to guard and protect the rights of the said Indian tribes in this respect have made it a condition precedent to these leases that these plaintiffs should employ in their service in this behalf a specified number of said Indians, and in pursuance thereof these plaintiffs have employed said Indians as aforesaid and are now employing and pay-

ing a large number of said Indians in the capacity herein named, and that said Indians so employed by them are comparatively inefficient and in no sense are worth to these plaintiffs the wages so paid them in this behalf; that the condition imposed in this respect on these plaintiffs by the authorities of the United States having in charge and guarding the interests of said tribes of Indians has been principally to alienate as much as possible a large number of said Indians from their tribal relations, and that they may be trained in the methods of the white man, and by contact and associations, as well as by discipline and experience in this respect, learn to know how to be self-sustaining; that many of said Indians, by reason of service in this respect, have grown proficient as herders, and have increased infinitely in capacity for service in this direction, and some of them are now able to compete with efficient laborers in this line and earn wages even in competitive fields; but none of said Indians were efficient in this respect in the inception of these leases, and those that have attained any proficiency have done so under the supervision of and by the assistance of these plaintiffs; that by reason of these promises and these conditions imposed on these plaintiffs the rentals paid by them for the portions of said reservation so leased by them has been exceedingly high and very much greater in proportion than similar lands of equal value for grazing purposes to these can be had in close proximity in the State of Texas; that said State, by an act of her legislature at its last session, has reduced the rental of all the school lands of said State, embracing many millions of acres, to a minimum of not less than two cents per acre for grazing purposes; that these plaintiffs were induced and it was a paramount consideration to them in leasing the lands within this reservation that thereby they would be relieved and excepted from all costs and all tax of every discription that was incident to or might and would be assessed against them on account of the stock they were herding and ranging on said reservation had the same been held or remained in any other country *other* than an Indian reservation, and that thereby they were especially induced to make these leases within this reservation; that during the many years these plaintiffs have been leasing the lands within said reservation, now fully ten years, there has never heretofore been any attempt prior to the present year to enflict any cost or impose any tax on the property owned by these plaintiffs within said reservation.

But these plaintiffs would respectfully show that during the present year the defendant Neil W. Evans, as treasurer of said Canadian county, has levied a tax upon all the cattle and horses of these plaintiffs in the Kiowa and Comanche reservation, not only for the present year, 1895, but has likewise levied a tax upon all of said property during the present year for the past years of 1892, 1893, and 1894 and has issued writs to his codefendant, J. M. Cannon, as sheriff of said county, under such levy, and thereby directing and requiring said sheriff to serve such writs and take possession of said cattle and horses and sell the same and therefrom to satisfy said

writs, and said sheriff is now threatening to execute said writs by seizing said cattle and horses.

That the assessment of these properties for taxes for the years 1892, 1893, and 1894 include- an assessment for the territorial fund, county general fund, county road and bridge fund, county sinking fund, county separate school fund, and county fund.

That the taxes levied for 1895 are for the territorial fund, county school fund, separate school fund, sinking fund, contingent fund, county expense fund, county supply fund, road and bridge fund, poor and insane fund, and salary fund; that all of said assessments and all of said taxes so levied for these several years, with the exception of those enumerated for territorial purposes, are assessed and levied exclusively for Canadian county; that no part nor any part of said taxes so assessed and levied is intended to be appropriated or used within said reservation, but all of the taxes so levied on the property of these plaintiffs situated and being wholly within said Indian reservation is sought to be used and will be used exclusively for and within Canadian county, and no part of which said county lies or is situated within said reservation; that these plaintiffs are all citizens and residents of the State of Texas and do not reside nor remain in the Territory of Oklahoma, nor do they reside nor remain nor have they any property of any kind or description in the county of Canadian, in said Territory.

That there is no county school kept or provided for within said reservation, nor is there any other school kept or provided in said reservation by said county or Territory.

That the tax assessed and levied for sinking fund is to pay debts of the county of Canadian contracted and incurred before the years respectively for which they are assessed, and none of said debts were made or contracted for the benefit of said reservation, of the persons or property therein, and said reservation nor the persons nor the property therein obtain any benefit from said tax.

That the tax levied for contingent fund is not one which the property nor the inhabitants of said reservation can claim any share or part of; that the court expenses are for the expenses of the district court of Canadian county and probate court and justices of the peace of said county, for which these plaintiffs are not, nor any of the people holding property in the said reservation, in any way responsible; that the county supply fund is for supplies for
7 said Canadian county and not in any manner for the benefit of said reservation, and is not a fund in which said reservation, the people or property thereof, have any concern or interest; that the road and bridge fund is a fund which is not intended for nor is in any manner appropriated for the use of said reservation.

That the said reservation is not in whole nor in any part of it included in any road or bridge district: that said fund is intended for and will be used exclusively within the limits of and for said Canadian county; that the poor and insane fund is intended for and will be used exclusively for the use and care of the poor and insane of said county and not for the poor and insane of said reservation; that the poor and insane of said reservation have no legal right to

apply to the authorities of said county for care or benefit from said fund; that the salary fund is intended for and will be used for the use and benefit of the officers within and for said Canadian county and not for any officer or officers within said reservation, nor are there any officers for any county purposes in said reservation; that the county general fund is and was intended for and will be used for the benefit of the concerns of Canadian county and not for the use and benefit of the people or concerns of said reservation or any part of it.

That the territorial fund is not nor will any part of it be exoended for the use and benefit of the people or property of said reservation, but is intended and will be used exclusively for the benefit of the people and property of Oklahoma Territory as is included and lies only in organized counties; that none of said taxes so assessed or levied are for the use or benefit of the people or property within said reservation.

That persons having property in said reservation and living within said reservation or within the State of Texas cannot vote on any question in Oklahoma Territory or touching any of said taxes. They cannot vote for any territorial or county officer nor use the schools nor hold any office which said taxes are intended to pay for; that there is no benefit, directly or otherwise, accruing to these plaintiffs from the levy and collection of these taxes, and said tax is not reciprocal in any wise.

A schedule of these taxes, both territorial and county levies, marked Exhibit A, *are* attached hereto and orayed to be made and taken as a part hereof.

These plaintiffs would further show that the action of said county treasurer and said sheriff in levying and seeking to collect said taxes is without warrant of law and in violation of the rights of these plaintiffs; that if said sheriff is permitted to proceed and levy said writs upon the cattle and horses now on the range and in the pastures leased by these plaintiffs in said reservation as aforesaid the damage to these plaintiffs will be beyond computation and irreparable; that these plaintiffs are informed, and so believe, that the amount of taxes claimed to be due by them by virtue of these assessments and levies herein detailed, and for which warrants are now in the hands of said sheriff, and that he is threatening to execute the same by seizing and taking into his possession the cattle and horses of these plaintiffs and selling the same to satisfy said warrants, exceed some forty thousand dollars in the aggregate; that to that end said stock will be removed from their range and herded and held together for purpose of sale for the period directed by law for sales, and thereby said stock will be greatly deteriorated in flesh and will not bring at public sale a tithe of their value, and will be so reduced as to greatly impair their capacity for withstanding the winter, and for such damage said officer and his bondsmen would be wholly unable to requite these plaintiffs and reimburse them for the actual loss they would thereby sustain; that under the most careful management said cattle could not be so held or herded, that

many of them would stray off and be permanently lost to these plaintiffs.

These plaintiffs would further show that these defendants and each of them claim that said treasurer and said sheriff *and* their proceedings in this behalf are acting under an act of the legislature of Oklahoma purporting to be an act to amend section 13 of art. 2, chap. 70, of the Oklahoma Statutes concerning revenue, and approved by the governor of said Territory on the 5th day of March, 1895.

These plaintiffs would further show, and so charge, that they are informed, and so believe, that no such act as is above referred to existed or ever existed or was passed by the legislature of Oklahoma Territory or was ever approved by the governor of Oklahoma Territory, and there was no such amendment to sec. 13 of
8 art. 2, chap 70, of the Oklahoma Statute concerning revenue and under which these said officers are claiming to act.

These plaintiffs further charge that if said act had been legally passed by said legislature and approved by said governor that still it would be without authority of law and invalid because said act provides that a special assessor to assess the taxes in said reservation shall be appointed by the county commissioners of the organized counties to which this reservation is attached, viz., the county of Canadian, and does not provide that the inhabitants of this reservation shall at any time vote for such officers; and for the further reason that said act would compel the persons and bind the property in said reservation to pay the tax, debts, and liabilities of the organized county of Canadian in which the persons and property in said reservation have no part or interest; that said act does not purport to have been passed and approved before the 5th day of March, 1895, and said act can have no application to property in said reservation until after its passage and approval.

That the only valid act of Oklahoma Territory, viz. (5591), requires that all property shall be listed, assessed, and taxed on the first day of February of each year; that under this pretended act under which these defendants claim to be acting, even if the same was valid, which is in no manner admitted, no valid assessment could be made before the first day of February, 1896.

That any attempt to provide for taxing property in said reservation at a different date from that in organized counties is in violation of that provision of the United — statutes requiring all taxes shall be equal and uniform, and said act is especially invalid, as it is in violation of the statutes of the United States providing that the legislatures of the several Territories shall not pass local or special laws for the assessment and collection of taxes for territorial, county, township, or road purposes, as is shown in the act of July 30, 1886.

That said act is further void and invalid and against the laws of the United States because the same is special, local, and partial legislation, and only undertakes to tax certain classes of property and leaves other and different classes of property untaxed. Said act does not seek or propose to tax other property than cattle or horses in

said reservation; that choses in action and franchises in any of said reservations are not taxed, and yet in many of these reservations there are large interests in these respects, as well as railway tracks, sidings, turnouts, rights of way, and many kinds of personal property which for long years have been in many of said reservations within the limits of this Territory, and none or no species of this kind of property is sought or attempted to be taxed by this said amended act.

That said pretended act is invalid and against the laws of the United States as local, special, and partial legislation, and not uniform in this, that all property in Oklahoma is by law to be taxed as of the first day of February in each year, whilst the property in this reservation is to be taxed as of the first day of May in each year.

The valid laws of Oklahoma provide that the clerk, assessor, and treasurer of each township shall compose the board of equalization of such township as to assessments of the property of individuals, and the board of county commissioners, acting in such case as a county board of equalization, is given power to equalize assessment-rolls as between the different townships of the county only, while this pretended act does not provide any board of equalization of individual assessments for said reservation or any township thereof, but only provides that any person aggrieved by his assessment in said reservation must, if he desires relief, apply to the said commissioners of said county.

These plaintiffs would further show that if said pretended act is declared valid that it will impair the rights of the said Indian tribes in this reservation vested and assured to them under treaties and valid laws of the United States; that it will largely diminish the rental they are now receiving from these plaintiffs for the lands so leased to them in said reservation; that said rental now paid to said Indians, as hereinabove shown, will aggregate fully ten cents per acre, while pasture lands equally as good can now be had for much less money.

That if the said taxes now sought to be imposed on these plaintiffs by this pretended act be valid that it will nearly double the cost to these plaintiffs the land now leased, and they will proceed at once to cancel said leases or to reduce and diminish the price paid said Indians for said lands by the amount of the tax proposed
9 to be levied on them in this behalf, and thereby impair and destroy the rights of these said Indians under the treaty herein referred to.

The said board of commissioners of Canadian county, hereinabove mentioned, claim to have an interest in this matter and are made parties hereto to show, if they can, as to what interest the said Canadian county may have in this respect.

Wherefore these plaintiffs pray for an order restraining said sheriff from levying any writs for any taxes under this pretended act on any of the property of these plaintiffs within said reservation, or under any other statute of Oklahoma Territory, real or pretended, passed by its legislature and approved or purporting to be approved by its governor, and plaintiffs pray that the said treasurer and said

sheriff and the said commissioners and each and all of them, their agents and attorneys, be forever enjoined and restrained from any further attempt as aforesaid to levy, collect, or raise taxes of any kind under the act, real or pretended, as aforesaid, or without authority under any statute.

And plaintiffs pray for all other relief to which they may be entitled, general or special, in the premises.

FLOOD, HUGHES & FOSTER,
HORACE SPEED,
Att'ys for Plaintiffs.

STATE OF TEXAS, }
County of Wichita, } ss:

Now comes S. B. Burnett, one of the plaintiffs herein, and, being duly sworn, says he has heard read the foregoing bill, and that all matters of law therein stated on information and belief he believes to be true, and that all matters therein stated pertaining to lease of lands in said reservation from said Indians and the cost thereof and the hiring of Indian men and the value of said lease to him and condition under which he has made same are of his own knowledge true, and that the other matters therein stated he believes to be true on information and belief.

S. B. BURNETT.

Subscribed and sworn to before me this 9th day of November, 1895.

L. W. FRISKI,
[SEAL.] *Notary Public, Wichita Co., Texas.*

STATE OF TEXAS, }
County of Wichita, } ss:

Comes now W. T. Wagoner, and, being duly sworn, says he is a member of the firm of D. Wagoner & Son, plaintiffs herein, and that he has heard the within bill read and the matters therein stated as of law he is informed and believes to be true, and the matters pertaining to the lease of the land in the reservation named and the inducement to said lease, as well as the price paid therefor, and all matters pertaining to said lease of his own knowledge are true, and all other matters therein stated he believes from information to be true.

D. WAGONER.

Subscribed and sworn to before me this November 11th, A. D. 1895.

ERNEST A. FOSTER,
[SEAL.] *Notary Public in and for Wichita County, Texas.*

Endorsements: 1159. D. Wagoner *et al. vs.* Neil W. Evans *et al.* Petition. Filed Nov. 18, 1895. Benj. F. Hegler, clerk, by E. M. Hegler, deputy.

EXHIBIT "A."

Territorial and Canadian County Levies 1892, '3, '4, *and* 5.

	1892.	1893.	1894.
Territorial fund	4 mills.	4 mills.	4.6 mills.
Co. general fund	6 "	6 "	4 " "
Co. road & bridge	2 "	5 "	3 "
Co. sinking	2½	3½	4 "
Co. separate school	..	½ "	1 "
Co. school	5 "	4½	2 "
	19.5	23.5	18.6

	1895.
Salary	2.9
Poor & insane	.6
Road & bridge	.4
County supply	.6
Court expenses	1.9
Contingent	.7
Sinking	2.1
Separate school	.3
County	1
Territorial levy	4.6
	15.1
	5

Territorial and County Levies Made on the Assessment of Canadian County, O. T., 1893, '4, '5.

	1892.	1893.	1894.
Territorial fund	4 mills.	4 mills.	4.6 mills.
County general fund	6 "	6 "	4 "
Co. road & bridge	2 "	5 "	3 "
Co. sinking	2½	3½	4 "
Co. separate school	..	½	1 "
Co. school	5 "	4½	2 "
	19½	23½	18.6

County 1895 *Levies.*

Salary fund	2.9
Poor & insane	.6
Road & bridge	.4
County supply	.6
Court expense	1.9
Contingent	.7
Sinking	2.1
Separate school	.3
County school	1
Total	10.5
Territorial levy 1895	**4.6 mills.**

And afterwards, to wit, on the 20th day of Nov., 1895, the defendants filed their demurrer to plaintiffs' petition, which is in words and figures as follows, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court.

D. WAGONER & SON *et al.*, Plaintiffs, }
vs.
NEIL W. EVANS *et al.*, Defendants. }

Demurrer.

The defendants in this cause demur to the petition of plaintiffs, because it does not state facts sufficient to constitute a cause of action.

T. R. REID,
W. W. BUSH,
Attorneys for Defendants.

And afterwards, to wit, on the 20th day of May, 1896, the following proceedings were had, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court in and for said County and Territory.

D. WAGONER *et al.* }
vs. } 1159.
NEIL W. EVANS *et al.* }

Comes now the parties, by their respective counsel, and this cause now comes on for hearing upon defendants' demurrer to the petition, and the court, having heard the arguments of counsel and being duly advised in the premises, finds that the petition states a good cause of action. It is therefore considered and decreed by the court that the demurrer be, and is hereby, overruled; to which action of the court the defendants and each of them except; which exception is allowed, and defendants now file their answers, which is in words and figures as follows, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court.

D. WAGONER *et al.* }
vs. } 1159.
NEIL W. EVANS *et al.* }

The defendants, for answer to the petition herein, say that they adopt as their answer the agreed statement of facts filed herein.
Wherefore they pray to be hence dismissed with their costs.

12 And the parties now file herein an agreed statement of facts, which is in words and figures as follows, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court.

D. WAGONER *et al.* }
vs. } 1159.
NEIL W. EVANS *et al.* }

The parties to this action agree that the court, in passing upon the merits of this case, may take into consideration the following facts in addition to the allegations in the petition, which allegations are admitted, save as modified below, to wit:

1st. That the Indians' reservation described and referred to in plaintiffs' petition was duly attached to Canadian county by an order of the supreme court of Oklahoma Territory on the 9th day of May, 1890, for judicial purposes, in pursuance of section 9 of the organic act, and said order is in full force.

2nd. That the unorganized country at that time situated in this Territory consisted only of Indians' reservations, including the Arrapahoe and Cheyenne reservations, the Kiowa, Comanche, Apache, and Wichita reservations in the western and southwestern side of the Territory, and the Pottawatomie, Sac and Fox, Kickapoo, Osage, Tonkawa, Ponca and Otoe, Shawnee, and Iowa reservations in the east side of said Territory, which said various reservations were attached to several counties of the west and east sides of the Territory for judicial purpises.

3rd. It is admitted that the Canadian county clerk did, on the 3rd day of October, 1895, value and assess and list the personal property of the plaintiffs for the year 1894, and placed and extended said reassessments on the tax-rolls of Canadian county and certified same to the county treasurer of said county, claiming to act in pursuance of sec. 14, art. 3, chap. 22, page 398, Oklahoma Statutes; that the valuation and property so listed, valued, and assessed by the clerk was the same property and valuation as fixed by the special assessor under the act of the territorial legislature, purporting to have been approved the 5th day of March, 1895, entitled "An act to amend section 13, art. —, chap. 70, of Oklahoma Statutes relating to revenue, and while it is a fact that the same property was thus assessed and valued at the same price and value by said officers, only one tax is sought to be collected.

That county clerk made said list from the return made by the special assessors appointed by the board of county commissioners, and based the valuation made by him on the valuation made by the said assessors, he then claiming the lists and valuations so made to be satisfactory evidence of the value of the property so listed, and said clerk made no effort to ascertain the value of said property in any other manner, said cattle being then in said reservation.

4th. It is agreed that plaintiffs are white men, and not Indians.

5th. That on the 25th day of December, 1890, the organized counties of the Territory consisted of First county, now named Logan county; Second county, now named Oklahoma county; Third county, now named Cleveland county; Fourth county, now named Canadian county; Fifth county, now named Kingfisher county; Sixth county, now named Payne county, and Seventh county, now named Beaver county.

That at said date the remainder of the Territory lying outside of said county limits and within the interior limits of the Territory of Oklahoma was not subdivided into counties or any part thereof prior to January 1st, 1891.

6th. It is agreed that the board of county commissioners in and for Canadian county, on the 1st day of February, 1894, made the following order and entered the same upon the records of its proceedings, to wit:

FEBRUARY 1ST, 1894.

Board met pursuant to recess, all members present, and transacted the following business, to wit:

It was ordered by the board of county commissioners that the boundaries of Union township be changed so as to include all of the Wichita, Kiowa, Comanche, and Apache Indian reservation, according to the U. S. official survey, and it is hereby made a part of Union township, Canadian county, O. T.

13 It is not admitted by plaintiffs that said commissioners had any authority to make such order, but their authority to make such order is denied upon the ground that no law authorized or permitted such order. Plaintiffs therefore allege that such order was void and without effect under the law.

It is agreed that the tax warrants against the plaintiffs for the taxes of 1895 did not issue until January, 1896, but that the taxes had been extended upon the tax books and records by the county clerk and said Evans, as county treasurer, for the purpose and with intent to collect them from petitioners, and payment thereof was being demanded by defendants thereunder from and after the first day of November, 1895.

That on the 31st day of January, 1893, the board of commissioners of Canadian county, in said Territory, made an order and entered it upon its records as follows, to wit:

"Board appointed John J. Jennings special assessor for that part of Oklahoma Territory attached to Canadian county for judicial purposes," and the said John J. Jennings gave bond for the faithful performance of his duties, which bond was approved by said board on the 2nd day of February, 1893, but said Jennings did not take an oath of office as such assessor.

That said special assessor during said year made out a list of the property on said reservation belonging to plaintiffs and valued and assessed the same under said order of appointment, which property consisted of said cattle, and returned such list to the clerk of said county as an assessment of said property for the year 1893.

And the collection of the taxes claimed against plaintiffs as based

on the said valuation and return *were* enjoined by this court at the suit of plaintiff- as an illegal levy and assessment.

And this cause is now submitted to the court for hearing and decision upon the petition, answer, and statement of facts, and the court, being fully advised in the premises, does now find—

That the defendants and each of them are fully authorized by the laws of Oklahoma Territory to collect from the petitioners and each of the- the taxes for territorial and judicial purposes for the year 1895 only, and that the defendants and each of them are without authority to collect from the petitioners and each of them the taxes for county, township, or other than the territorial and judicial purposes as aforesaid.

It is therefore considered and decreed by the court that the defendants and each of them are authorized and permitted to collect those parts of the tax which are for territorial and judicial purposes for the year 1895 only and are not authorized or permitt-, and are hereby enjoined and ordered, not to collect any part of the taxes which are for county, township, or other than the territorial of judicial purposes as aforesaid and no taxes whatever for the years 1892, 1893, and 1894; to which order and decree the petition-s and defendants each and severally object and except; which exceptions are allowed.

And the petitioners now here file a motion for a new trial, which is in words and figures as follows, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court.

D. WAGONER *et al.* }
vs. } No. 1159.
NEIL W. EVANS *et al.* }

The petitioners herein move the court for a new trial herein for the following causes, to wit:

1st. The findings, decision, and judgment of the court are contrary to the law.

2nd. The findings, decision, and judgment of the court are not supported by sufficient evidence.

W. W. FLOOD,
HORACE SPEED,
Attorneys for Petitioners.

Which motion was by the court overruled; to which ruling of the court plaintiff severally excepts.

14 And the defendants now file a motion for a new trial; which motion is in the words and figures following, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court.

D. WAGONER *et al.*
vs.
NEIL W. EVANS *et al.* } No. 1159.

The defendants herein move the court for a new trial for the causes following, to wit:

1st. The findings, decision, and judgment of the court are contrary to the law.

2nd. The findings, decision, and judgment of the court are not supported by sufficient evidence.

W. W. BUSH,
T. R. REID,
Attorneys for Defendants.

Which motion is by the court overruled; to which ruling of the court the defendants severally except.

And the petitioners and defendants each now pray severally an appeal to the supreme court, which is nor by the court allowed, and thirty days is now given to make and serve a case made and ten days to suggest amendments and ten days' notice to have the same settled and signed; and the court does now direct that the appeal bond of the petitioners be made in a sum not exceeding twenty thousand dollars, and the appeal bond of the defendants to be made as an undertaking for the payment of any costs and expenses arising from their appeal.

Be it further remembered that on the 20th day of May, 1896, it being the — judicial day of the —— term of the district court—Hon. John H. Burford, presiding judge—the following further proceedings were had in this case:

The cause being at issue and submitted to the court for trial without the intervention of a jury, the plaintiffs and the defendants introduce as the only evidence in the case the following agreed statement of facts, which were in words and figures as follows, to wit:

TERRITORY OF OKLAHOMA, } ss:
Canadian County, }

In the District Court of said County.

D. WAGONER *et al.*
vs.
NEIL W. EVANS *et al.* } No. 1159.

The parties to this action agree that the court in passing upon the merits of this case may take into consideration the following facts in addition to the allegations in the petition; which allegations are admitted, save as modified below, to wit:

1st. That the Indian reservation prescribed and referred to in plaintiffs' petition was attached to Canadian county by an order of the supreme court of Oklahoma Territory on the 9th day of May, 1890, for judicial purposes in pursuance of section 9 of the organic act, and said order is in full force.

15 2nd. That the unorganized country at that time situated in this Territory consisted only of Indian reservations, including the Arrapahoe and Cheyenne reservations, the Kiowa, Commanche, Apache, and Wichita reservations in the western and southwestern side of the Territory, and the Pottawatomie, Sac & Fox, Kickapoo, Osage, Tonkawa, Ponca and Otoe, Shawnee, and Iowa reservations in the east side of said Territory; which said various reservations were attached to several counties of the west and east sides of the Territory for judicial purposes.

3rd. It is admitted that the Canadian county clerk did, on the 3rd day of October, 1895, value and assess and list the personal property of the plaintiffs for the year 1894, and place- and extended said reassessments on the tax-rolls of Canadian county and certified the same to the county treasurer of said county, claiming to act in pursuance of sec. 14, art. 3, chap. 22, page 398, Oklahoma Statutes; that the valuation and property so listed, valued, and assessed by the clerk was the same property and valuation as fixed by the special assessor under the act of the territorial legislature purporting to have been approved the 5th day of March, 1895, entitled "An act to amend sec. 13, art. —, chap. 70, of Oklahoma Statutes relating to revenue," and while it is a fact that the same property was thus assessed and valued at the same price and value by the officers only one tax is sought to be collected.

That county clerk made said list from the return made by the special assessor appointed by the board of county commissioners and based the valuation made by him on the valuation made by the said assessors, he then claiming the list and valuations so made to be satisfactory evidence of the value of the property so listed, and said clerk made no effort to ascertain the value of said property in any other manner, said cattle being then in said reservation.

Fourth. It is agreed that plaintiffs are white men and not Indians.

Fifth. That on the 25th day of December, 1890, the organized counties of the Territory consisted of First county, now named Logan county; Second county, now named Oklahoma county; Third county, now named Cleveland county; Fourth county, now named Canadian county; Fifth county, now named Kingfisher county; Sixth county, now named Payne county, and Seventh county, now named Beaver county.

That at said date the remainder of the Territory lying outside of said county limits and within the interior limits of the Territory of Oklahoma was not subdivided into counties or any part thereof prior to January 1st, 1891.

Sixth. It is agreed that the board of county commissioners in and for Canadian county, on the first day of February, 1894, made

the following order and entered the same upon the records of its proceedings, to wit:

"FEBRUARY 1ST, 1894.

Board met pursuant to recess, all members present, and transacted the following business, to wit: It was ordered by the board of county commissioners that the boundaries of Union township be changed so as to include all of the Wichita, Kiowa, Commanche, and Apache Indian reservations, according to the U. S. official survey, and it is hereby made a part of Union township, Canadian county, O. T."

It is not admitted by plaintiffs that said commissioners had any authority to make such order, but their authority to make such order was denied upon the ground that no law authorized or permitted such order. Plaintiffs therefore allege that such order was void and without effect under the law.

It is agreed that the tax warrants against the plaintiff- for the taxes of 1895 did not issue until January, 1896, but that the taxes had been extended upon the tax books and records by the county clerk and said Evans as county treasurer for the purpose and with the intent to collect them from petitioners, and payment thereof was being demanded by defendants thereunder from and after the first day of November, 1895.

That on the 31st day of January, 1893 the board of commissioners of Canadian county, in said Territory, made an order and entered it upon its records as follows, to wit:

"Board appointed John J. Jennings special assessor for that part of Oklahoma Territory attached to Canadian county for judicial purposes," and the said John J. Jennings gave bond for the faithful performance of his duties; which bond was approved by said board on the 2nd day of February, 1893, but said Jennings did not take an oath of office as such assessor.

16 That said special assessor during said year made out a list of the property on said reservation belonging to plaintiff- and valued and assessed the same under said order of appointment, which property consisted of said cattle, and returned such list to the clerk of said county as an assessment of said property for the year 1893.

And the collection of the taxes claimed against plaintiff- as based on the said valuation and return were enjoined by this court at the suit of plaintiff- as an illegal levy and assessment.

And this was all the evidence given in the case; and the plaintiffs and defendants now tender this as the bill of exceptions for them severally and pray that the same be signed, sealed, and made a part of the record, which is done this 28th day of May, 1896.

JOHN J. BURFORD,
Judge District Court.

Attest: BENJ. F. HEGLER,
[SEAL.] *Clerk Dist. Ct.*

17 And be it further remembered that on this 28th day of May, 1896, this case made was filed in this court with the certificate of the judge and attestations of the clerk in the words and figures following, to wit:

TERRITORY OF OKLAHOMA, } *ss*:
Canadian County, }

In the District Court.

D. WAGONER *et al.* }
vs. } No. 1159.
NEIL W. EVANS *et al.* }

The foregoing case made is on this 28th day of May, 1896, submitted to me, Jno. H. Burford, judge of district court, who tried said cause, upon notice by the plaintiffs in error, D. Wagoner *et al.*, to the defendants in error, and upon the foregoing acceptance of service and waiver by counsel for defendants in error, and in the presence of the said counsel for defendants in error, and I do now settle and sign the same and certify that the foregoing case made is a full, true, and correct copy of the pleadings, agreed statement of facts, motions, rulings, proceedings and all the evidence in the case, and judgment; that the same was duly served upon counsel for the defendants in error and amendment thereof waived by them.

In witness whereof I hereunto set my hand and have caused this certificate to be *attached* by the clerk and the seal of the court to be attached hereto this day last above written.

JNO. H. BURFORD,
Judge District Court.

Attest: BENJ. F. HEGLER,
Clerk Dist. Court,
[SEAL.] By E. M. HEGLER, *Dep.*

I accept service of this case made and notice of appeal and "O K" this case made in court that the case may be filed and tried this term of the supreme court.

W. W. BUSH,
Of Counsel for Def't-.
THOS. R. REID, *Co. Att'y.*

Endorsements: #1159. D. Wagoner & Son *et al. vs.* Neil W. Evans *et al.* Case made. Filed 5, 28, 1896. Benj. F. Hegler, clerk dist. court, by E. M. Hegler, dep. Filed June 3rd, 1896. Edgar W. Jones, clerk supreme court.

TERRITORY OF OKLAHOMA:

In the Supreme Court.

D. WAGONER *et al.*
vs.
NEIL W. EVANS *et al.*

We waive service of summons and hereby enter appearance for the defendants in error, and consent that bond for costs shall be filed herein as the only appeal necessary in the case.

C. A. GALBRAITH,
——— ———,
Attorneys for Defendants in Error.

(Filed June 3, '96.
EDGAR W. JONES,
Clerk Supreme Court.)

18 Be it further remembered that on this the 6th day of June, A. D. 1896, the following further proceedings were had:

D. WAGONER & SON *et al.*
vs.
NEIL W. EVANS *et al.*
473.

And now, on this 5th day of June, A. D. 1896, the above cause was argued and submitted.

19 Be it further remembered that on the fourth day of September, A. D. 1896, the following opinion of the supreme court was filed:

In the Supreme Court, Oklahoma Territory.

D. P. GAY *et al.*
vs.
A. M. THOMAS, COUNTY COMMISSIONERS KAY COUNTY, *et al.*

Opinion of the Court.

1. Taxation, power of legislature in imposing, extent of.—The power of taxation is not an arbitrary power, nor can it be exercised capriciously. It is hedged about and restricted by wise constitutional limitations and fixed general rules. These constitutional limitations and general rules are designed to secure a just apportionment of the burdens of government by requiring uniformity of contributions, levied by fixed and general rules and apportioned by the law, according to some uniform measure of equality. Within these rules and limitations the authority and power of the legislative department is absolute and conclusive.

2. Taxation, legislative discretion in.—The discretion of the legislature in matters of taxation is very broad and its exercise may work injustice and oppression. The judicial cannot prescribe to the legislative department of the Government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively, but if it does not clearly violate some established rule or limitation the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. The courts can only interfere when the conclusion is unavoidable that the legislature has transcended its powers or clearly violated some constitutional or other fixed general rule defining or limiting such powers.
3. Indian reservations, taxation of property therein.—In the absence of any provisions or stipulations in the treaties by which the Indians were settled on the reservations in this Territory, that the lands in such reservations should not, without the consent of the Indians occupying them, be included within the limits or jurisdiction of any State or Territory that might thereafter be created and which should include such reservations within its exterior boundaries, the authority of the Territory may extend over such reservation in all matters of rightful legislation not interfering with the persons or property of the Indians under the protection of the United States. As to all matters and subjects of rightful legislation not interfering with that protection and not otherwise repugnant to the Constitution and laws of the United States the legislative power of the Territory is as absolute in and upon these reservations as in any other part of this Territory.
4. Taxation of property on Indian reservations.—Taxation is a rightful subject of legislation. It is the duty of the territorial legislature to apportion the burdens of government upon all property within the Territory not withdrawn from its jurisdiction by the organic act or otherwise exempted. The property of United States citizens not connected with the Indians kept upon these reservations is a part of the mass of property within the Territory receiving the protection of its laws and subject to taxation. It was, therefore, the right and duty of the legislature to subject such property to taxation.
5. Taxation of cattle of citizens on Indian reservations not an impairment of the rights of the Indians.—Taxation of cattle of white men kept and grazed upon Indian reservations under leases from the Indians is not a taxation of any right or property of the Indians. The taxation in controversy in this case was not assessed or levied upon the real estate or upon the rents of real estate belonging to the Indians, and was, therefore, not invalid as interfering with the property rights of the Indians under the protection of the United States and withdrawn from the jurisdiction of the

Territory, nor obnoxious to the principle of Pollock *vs.* Farmers' Loan and Trust Company, 157 U. S., 429, even if the constitutional provision governing that case was operative upon any other legislative body than the Congress of the United States or in the raising of revenue for any other government than the Federal Government, which it was not.

6. Taxing districts established by legislature, not by courts.—The establishing of taxing districts is a legislative, not a judicial function. The taxing district comprising the county of Kay and the attached Indian reservations and unorganized country was not created by the order of the supreme court attaching such Indian reservations and unorganized country to Kay county for judicial purposes, but by the act of March 5th, 1895. The supreme court attached such territory to Kay county for judicial purposes, and the legislature adopted and made the district thus created a taxing district.

7. Taxation—Discrimination between classes of property—What is not.—An act providing for the taxation of personal property alone in a district where there is no real estate subject to taxation is not invalid as discriminating in taxing different kinds of property. Courts will take judicial knowledge of the treaties of the United States with Indian tribes, and from those treaties that the title to the lands in the Indian reservations in this Territory is in the Indian tribes or in the United States for the benefit of the Indians, and that there is no real estate therein subject to taxation.

8. Taxation—Purposes of validity.—Taxation must be for purposes in which the people taxed have a legal interest. Property which is located upon an Indian reservation and which is attached to a county of the Territory for judicial purposes, but is not within the geographical boundaries of the county and is not a part of the county for municipal purposes, and in which the people thereof have no voice in the selection of the county and other officers, and no part of the fund derived from the taxes levied can be expended for the purposes for which they were levied within such Indian reservation, and which taxes, when collected, are to be appropriated entirely to the expenses of the county, roads, and schools within the organized county, cannot be taxed for the various county, school, and road purposes of such county. The property on such reservations can only be taxed for territorial and judicial purposes.

(Per Scott and McAtee, JJ.)

9. Laws, special, what are.—See Daily Leader *vs.* Cameron, 3 Okla., 677.

10. Taxation—Assessment, uniformity as to time of.—An act providing for listing and assessing personal property in Indian reservations and unorganized territory at a different time from that fixed for listing and assessing such property in organized counties is not invalid for want of uniformity. Taxes must be assessed according to some uniform rule; but this

does not mean that the time and method of assessment shall be identical, but only that after the legislature has declared what classes of property shall be subject to taxation the tax itself shall be levied upon such property or the owner thereof according to a uniform rate of valuation.

20 Error from the district court of Kay county.

Asp, Shartel & Cottingham for plaintiffs in error.

Mr. Att'y General Galbraith and D. L. Weir for defendants in error.

The opinion of the court was delivered by TARSNEY, *J.*:

Statement of Facts.

The plaintiffs in error are non-residents of the Territory of Oklahoma and owners of large herds of cattle that were kept and grazed during a portion of the year 1895 in parts of the Osage Indian reservation in this Territory.

The defendants in error are the board of county commissioners, treasurer, and sheriff of Kay county, Oklahoma Territory.

On the third Monday in February, 1894, the supreme court of the Territory of Oklahoma, by an order entered on the journals of said court, attached to said county of Kay, for judicial purposes, all the Kaw or Kansas Indian reservation and all of the Osage Indian reservation north of the township line dividing townships 25 and 26 north. All of said reservations so attached to said Kay county for judicial purposes, by such order, are without the boundaries of said Kay county, as established by the Secretary of the Interior, and are not within the boundaries of any organized county of this Territory. Said Territory, so attached to said county of Kay for judicial purposes, is comprised wholly of lands owned and occupied by Indian tribes, and consists, principally, of wild, unimproved, and unallotted lands used for grazing purposes; that plaintiffs in error, during the year 1895 and during the month of April of said year, drove, transported, and shipped to the ranges and pastures in that part of said Osage Indian reservation attached to said Kay county for judicial purposes as aforesaid large herds and numbers of cattle, which were taken onto said reservation in pursuance and by virtue and authority of certain leases to plaintiffs in error for grazing purposes made by the Osage tribal government under the supervision of the agent in charge of said tribe and upon the ratification and approval of the Commissioner of Indian Affairs and of the Secretary of the Interior, and said cattle of said plaintiffs in error were on the first day of May kept and grazed on that part of said Indian reservation attached to said Kay county for judicial purposes as aforesaid.

By an act approved March 5, 1895, the Legislative Assembly of the Territory of Oklahoma amended section 13, article 2, chapter 7, of the Oklahoma Statutes, relating to revenue, so that the same reads as follows: "That when any cattle are kept or grazed or any other

personal property is situated in any unorganized country, district, or reservation of this Territory, such property shall be subject to taxation in the organized county to which said country, district, or reservation is attached for judicial purposes," and authorized the board of county commissioners of the organized county or counties to which such unorganized country, district, or reservation is attached to appoint a special assessor each year, whose duty it should be to assess such property, and conferred upon such special assessor all the powers and required him to perform all the duties of a township assessor. The assessor so provided for was required to begin and perform his duties between the first day of April and the 25th day of May of each year and to complete his duties and return his tax-lists on or before June 1st, and the property therein authorized to be assessed, it was provided, should be valued as of May 1st each year.

In pursuance of the provisions of said act the county commissioners of said Kay county did duly appoint a special assessor for the year 1895 to assess such cattle as were kept and grazed and any other personal property situated in the unorganized country and parts of Indian reservations attached to said Kay county for judicial purposes, and said special assessor did, by virtue of said
21 appointment, assess all the personal property in the Territory so attached to the county of Kay for judicial purposes, including all of the cattle of the said plaintiffs in error kept and grazed in said reservation on the first day of May, 1895. The said special assessor assessed the property of these plaintiffs in error so located on said Territory attached to said county of Kay for judicial purposes as aforesaid and returned the same upon an assessment-roll at the total valuation of $760,469.00; that thereafter the said sum was by the clerk of said county carried into the aggregate assessment for said county and by him certified to the auditor of the Territory; that the territorial board of equalization in acting upon the various assessments of the various counties, as certified to said board, raised the aggregate valuation of the property returned for taxation upon the tax-rolls of said county of Kay thirty-five per cent., and the county clerk for said county carried out the raised valuation so certified to him by said territorial board of equalization against the property of these plaintiffs in error and made the aggregate valuation of such property $1,026,634.00. Thereafter the territorial board of equalization levied and duly certified to the county clerk of the county of Kay tax levies for territorial purposes for the year 1895 as follows:

General revenue, three mills on the dollar.
University fund, one-half mill on the dollar.
Normal school fund, one-half mill on the dollar.
Bond interest fund, one-half mill on the dollar.
Board of education fund, one-half mill on the dollar.

That the board of county commissioners for the county of Kay made the following levies for the year 1895:

For salaries, five mills on the dollar.
For contingent expenses, three mills on the dollar.

For sinking fund, one and one-half mills on the dollar.
For court expenses, two and one-half mills on the dollar.
For county supplies, three mills on the dollar.
For road and bridge fund, two mills on the dollar.
For poor fund of said county, one mill on the dollar.
For county school fund of said county, one mill on the dollar.

The county clerk of said county of Kay carried the valuation of the property of these plaintiffs in error upon the tax-rolls of said county and against the same extended the levies as aforesaid and charged against the property of these plaintiffs in error in the aggregate the sum of $26,174.16.

Before these taxes became delinquent, plaintiffs in error began to remove or attempted to remove their respective property from the territory attached to Kay county for judicial purposes and beyond the limits of Oklahoma Territory. The treasurer of said Kay county issued tax warrants for the several amounts of taxes levied against the property of each of said plaintiffs in error and delivered the same to the sheriff of said county for execution. Said sheriff seized certain property of each of plaintiffs in error by virtue of such tax warrants. The plaintiffs in error filed their several petitions in the district court of Kay county and on application obtained injunctions restraining the defendants in error from making any further attempt to collect such taxes. Afterwards, on motion, the several actions were consolidated into one. To the petition filed in such consolidated action the defendants in error filed a general demurrer. At the hearing the district court sustained the demurrer in part and overruled it in part, holding that all of the levies made for territorial purposes and the county levy for court expenses were valid, and as to those levies the injunction was dissolved, and as to all of the other county levies such injunctions were made perpetual. From that part of the order and judgment of the court dissolving the injunction as to the territorial taxes and the one county fund levy plaintiffs appealed; from that part perpetuating the injunction as to all of the county levies except that for court expenses the defendants appealed and filed their cross-petitions in error, and the case is thus here for review.

22 *Opinion of the Court.*

The questions involved are of great public and private interest and have received from us that very careful consideration and attention which their importance demands.

By section six of the organic act of the Territory it is provided—

"That the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed on the property of the United States nor shall the lands or other property of non-residents be taxed higher than the lands or other prop-

erty of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value;" * * *

A broader grant of legislative power than that contained in this section could hardly be conceived of. This organic act of the Territory defined its boundaries, created a government which comprised a legislative department, vested with power of legislating upon all rightful subjects of legislation and coextensive with the exterior boundaries of the Territory. The taxing power is a part of the legislative power of government, and taxation is a rightful subject of legislation. Taxes are the enforced contributions upon persons or property levied by the government by virtue of its sovereignty for the support of government and for public needs. The citizen pays from his property the portion demanded in order that by means thereof he may be secured in the enjoyment of the benefits of organized society. The power is unlimited in its reach as to subjects; in its very nature it acknowledges no limit. It is sometimes said that in its exercise it may become a power to confiscate or to destroy, but this must be thus qualified, that under our system of constitutional governments it differs from the forced contributions, loans, and benevolences of arbitrary and tyr/an-ical governments. It is not an arbitrary power, nor can it be exercised capriciously. It is hedged about and restricted by wise constitutional limitations and fixed general rules. These constitutional limitations and general rules are designed to secure a just apportionment of the burdens of government by requiring uniformity of contributions, levied by fixed general rules and apportioned by the law according to some uniform measure of equality.

Within these rules and limitations the authority and power of the legislative department is absolute and conclusive. The ends sought to be reached by these general and fundamental rules and constitutional restrictions upon the powers of taxation are equality, uniformity, and justice in apportioning the burdens of government, but, as the idea of exact equality, uniformity, or justice under any system of human laws being attainable is Utopian, it is not expected that such exactness can be attained in the exercise of the powers of taxation. Notwithstanding such fixed general rules and limitations, the discretion of the legislature is very broad and its exercise may work injustice and oppression. If such discretionary power be threatened with abuse, security must be found in the responsibility of the legislature that imposes the tax to the constituency that elected them. The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons or with regard to property, but if it do not clearly violate some established rule of limitation the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. The courts can only interfere when the conclusion is unavoidable that the legislature

has transcended its powers or clearly violated some constitutional or other fixed general rule defining or limiting such power.

Veazie Bank *v.* Fenno, 8 Wall., 548.
Weston *v.* Charleston, 2 Peters, 449–466.
Lane County *v.* Oregon, 7 Wall., 71.
Tallman *v.* Butler, 12 Iowa, 531.

Our inquiry, then, is, Did the legislature by the act of 1895,
23 under authority of which the taxes in controversy *was* assessed and levied, transcend its powers, and is such act a violation of any constitutional or other fixed general rule controlling the discretion of the legislature?

The only limitation or restriction upon the taxing power of the legislature which I find in the organic act for the Territory is that contained in section six (6) of said act, which is as follows:

"No tax shall be imposed on the property of the United States nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value."

And the following provision in section one (1) of said act:

"Provided, that nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements and treaties of the United States or to impair the rights of person or property pertaining to said Indians, or to affect the authority of the Government of the United States to make any regulation or to make any law respecting said Indians, their lands, property or other rights which it would have been competent to make or enact if this act had not been passed."

If, therefore, there be any restriction or limitation upon the power of the legislature to tax the property of plaintiffs or which makes such taxation invalid, it must be found in these provisions of the organic act or in the Constitution, treaties, or lesislation of the United States or some general rule inherent in our system of government. It is not contended that the act under which these taxes are sought to be imposed is obnoxious to any provision of the Federal Constitution, but it is contended by plaintiffs that the legislature has no jurisdiction to enact laws, especially tax laws, and put the same in force in these Indian reservations. The argument being that although these reservations are within the exterior boundaries of Oklahoma Territory, yet they comprise no part of the Territory for territorial governmental purposes, but are conclusively under the jurisdiction of the United States, and that the legislative power of the Territory does not extend over them. It is conceded by counsel for plaintiffs that the treaty under which the Osage Indians were settled on these lands contained no provision or stipulation by which said Indian tribe or the lands occupied by them were not, without their consent, to be included within the limits or

jurisdiction of any State or Territory that might thereafter be created and which should include such reservation within its exterior boundaries; that there was at the time the organic act creating the Territory of Oklahoma was passed, and at the time the act of 1895, authorizing the taxation in controversy, was enacted, and at the time these taxes were assessed and levied, no treaty with the Osage Indian tribe that the lands or any part thereof within this reservation should be thus excluded from the limits and jurisdiction of any State or Territory.

I think there is no proposition better settled by authorities than that in the absence of such treaty stipulation the authority of the Territory may rightfully extend over such reservation in all matters of rightful legislation not interfering with the persons and property of the Indians within such reservation under the protection of the laws and authority of the United States, and that as to all matters and subjects of rightful legislation not interfering with that protection and not otherwise repugnant to the Constitution and laws of the United States the legislative power of the Territory is absolute.

Utah & Northern Railway *v.* Fisher, 116 U. S., 28.
Langford *v.* Monteith, 102 U. S., 145.
Phœnix and Maricopa R. R. Co. *v.* Arizona Territory, sup. court of Ariz., 26 Pac. Rep., 310.
Maricopa & Phœnix R. R. Co. *v.* Ariz. Ter., 156 U. S., 347.
Torrey *v.* Baldwin, 26 Pac. Rep., 908.
Gon-Shay-ee, petitioner, 130 U. S., 343.
Ex parte Crow Dog, 109 U. S., 556–560.
U. S. *v.* Kagama, 118 U. S., 375.
United States *v.* Pridgeon, 153 U. S., 48.

This doctrine was distinctly held by this court in Keokuk *v.* Ulam, 4 Okla., —; 38 Pac. Rep., 1083. The contention of plaintiffs upon this proposition would seem to be based upon reasonings and
24 authorities which are not applicable. Their contention seems to be that these reservations are to be considered as exclusively under the jurisdiction of the United States, the same as lands purchased by the United States within the boundaries of States and with the consent of said States for the purposes of forts, arsenals, magazines, navy yards, dock yards, etc. If this contention were correct, then it would be supported by all the authorities and would prevail, for I conceded it to be uncontroverted that property situated wholly within boundaries exclusively within the jurisdiction of the United States cannot be taxed by the State or Territory within which it may be situated; but these reservations are not within boundaries exclusively within the jurisdiction of the United States, for the reason that Congress, in section six (6) of the organic act of this Territory, delegated to the government of the Territory legislative power extending to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States within the exterior boundaries of the Territory created by that act, which includes the reservation which is the locus of this contro-

versy; that the jurisdiction conferred upon the Territory is not exclusive; that Congress has reserved to itself jurisdiction over the persons and lands of the Indians occupying the reservation does not diminish or restrict the authority of the Territory to legislate concerning the persons and property of citizens of the United States therein. It was the duty of the territorial legislature to apportion the burdens of government upon all property within the Territory not withdrawn from its jurisdiction by the organic act or other laws of the United States or not otherwise exempted from such burden by law. The property of the plaintiff comprised a part of the mass of property within the Territory which was receiving the protection of its laws and which might lawfully be and should justly be subjected to taxation; and the right to subject such property to taxation, under the conditions and the situation in which plaintiffs' property was, has not been denied by any court, but has been upheld in numerous instances.

Utah Northern R'y *v.* Fisher, 116 U. S, 28.
Torrey *v.* Baldwin, 26 Pac. Rep., 908.
Phœnix & Maricopa R. R. Co. *v.* Ter. of Ariz., 26 Pac. Rep., 310.
Ferris *v.* Vennier, 6 Dacotah, —; 42 N. W. Rep., 34.
Marico- & Phœnix R. R. Co. *v.* Ariz. Ter., 156 U. S., 347.

In Torrey *v.* Baldwin, 26 Pac. Rep., 908, *supra*, the supreme court of Wyoming held that the treaty of July 3rd, 1868, with the Shoshones, pursuant to which their reservation was established, contained no reservation or exception whereby it should be excluded and excepted out of the territory within which it was situated, and that the reservation was included within the territory, and that cattle thereon belonging to a white person, in nowise connected with the Indians, were subject to taxation in the county within which the reservation lay.

In Phœnix and Maricopa Railroad Company *v.* Arizona Territory, *supra*, the supreme court of Arizona held that, in the absence of treaty or other express exclusions, the different Indian reservations became a part of the Territory where situate and subject to territorial legislative jurisdiction, subject, however, to the powers of the General Government to make regulations respecting the Indians, their property, etc., and that a railroad built across an Indian reservation in the Territory is subject to taxation by the Territory where there are no treaty stipulations or express exclusions against the jurisdiction of the Territory, and this decision was on appeal affirmed by the Supreme Court of the United States in 156 U. S., 347, *supra*.

In Utah Northern Railway *v.* Fisher, 116 U. S., 31, Mr. Justice Field says:

"The authority of the Territory may rightfully extend to all matters not interfering with that protection (protection of Indians and their property). It has therefore been held that process of its courts may run into an Indian reservation of this kind where the subject-matter or controversy is otherwise within their cognizance. If the plaintiff lawfully constructed and now operates a railroad

through the reservation, it is not perceived that any just rights of the Indians under the treaty can be impaired by taxing the road and property used in operating it."

25 A further contention of the plaintiffs is that this reservation, under the statutes of the United States, has been leased by the Osage nation or tribe for grazing purposes, and that the taxation of cattle kept and grazed upon said reservation is a direct tax upon the right of the Indians to lease the same and decreases to the extent of the tax the value of the Indian lands; that the act authorizing such taxation is in direct derogation of the property rights of the Indians upon such reservation and is therefore void. This proposition is without merit and certainly is unsupported by authority. The authority upon which plaintiffs rely to support this contention is the case of Pollock *v.* The Farmers' Loan and Trust Company, 157 U. S., 429, known as the Income Tax case. Counsel in their brief quote from Mr. Chief — Fuller on page 555 in the report of that case as follows:

"The contention of the plaintiff is, first, that the law in question in imposing a tax upon the income or rents of real estate imposes a tax upon the real estate itself, and in imposing a tax upon the interest or income of bonds or other personal property held for the purpose of income or ordinarily yielding income imposes a tax upon the personal estate itself; that such tax is a direct tax and void, because imposed without regard to the rule of apportionment, and that by reason thereof the whole law is invalid."

It is true that that contention was sustained by a majority of a divided court in that case, but I am unable to perceive its application to the principles of the case at bar. The contention was sustained in that case because it was held that a tax upon the income or rents of real estate imposed a tax upon the real estate itself; that it was therefore a direct tax, and that being such it was obnoxious to the provision of the Constitution prohibiting the levy of direct taxes except by apportionment among the several States. It would not be seriously contended that that provision of the Federal Constitution prescribed a rule operative upon any other legislative authority than the Congress of the United States or in the raising of revenue for the support of any government other than the Federal Government; but even if such contention should be made, the principle of the case cited is not broad enough to cover the proposition submitted by counsel for plaintiffs. The taxation we are considering was not assessed or levied upon the real estate or other property of the Indians occupying this reservation nor upon the income or rents of such Indians derived from such real estate or other property. This tax is not levied upon the rents which are paid to these Indians under their leases to the plaintiffs, but it is levied upon the property of the plaintiffs, in which the Indians have no interest. The argument that taxation upon property brought into this reservation for the purpose of grazing upon Indians lands is an additional servitude that decreases the salable value of the land, and that it operates in fixing the rental value of these lands to the same extent it would if made a tax upon the land itself, is scarcely

less remote than to say that the tariffs which these cattle-owners have to pay to railroad corporations for transporting their cattle out of these reservations to market is an additional servitude that decreases the rental value of the lands of the Indians, or that the taxation of the personal property of a tenant is an added servitude on the freehold of the landlord. I do not think the act of the legislature providing for this taxation in any manner impairs the property rights of the Indians occupying this reservation.

Another contention of the plaintiffs is that this taxation is unconstitutional and void because it rests upon the attempt of the supreme court of the Territory to fix taxing districts, which is a legislative function. The answer to this proposition is that the supreme court of the Territory has not attempted to fix any taxing districts; that that court, under the powers expressly vested in it by the organic act of the Territory, in 1894, attached this reservation and unorganized country to Kay county for judicial purposes and not for the purposes of taxation; that the taxing districts in which these taxes were imposed and levied *was* created and fixed, *bot* by the supreme court, but by the legislature in the act of 1895, the language of the act being—

"That when any cattle are kept or grazed or any other personal property is situated in any unorganized country, district or reservation of this Territory, that such property shall be subject to taxation in the organized county to which said country district or reservation is attached for judicial purposes."

26 It was by this act that a taxing district was created, and not by the order of the court.

Another objection which plaintiffs make against the legality of this tax is that the act attempting to authorize it only applies to personal property; that no provision is made for the taxing of real estate in such reservation; that it is a discrimination in taxing different kinds of property, and therefore in conflict with the organic act.

This court will take judicial knowledge of the public treaties of the United States, and from such treaties the court has judicial knowledge that the title to all the lands within this Indian reservation is in the Indian tribe or in the United States for the use of said Indian tribe. The power of taxation possessed by the territorial government not extending to the taxing of the property of the United States or of the Indian wards of the United States, there is no taxable real estate in said reservation, and consequently the act does not discriminate as between different kinds of property subject to taxation, there not being different kinds of property subject to taxation in such reservation.

The most serious contention of the plaintiffs that confronts us in this matter is that the act under which these taxes were assessed and levied is void for the reason that it attempts to tax property situated in these Indian reservations for the benefit of the counties to which they are attached for judicial purposes, the owners and holders of property on these Indian reservations it being claimed have no interest in the taxes gather- by said counties, no voice in

their expenditure nor benefit therefrom, said Indian reservations not being within the geographical boundaries of said counties; that the taxing of the owners of said property by such counties is taking the property of the persons holding said property on said reservation for the benefit of the residents of said county, and is therefore taking private property for private uses.

It is argued that plaintiffs have no interest in the purposes for which these taxes are to be expended and will derive no benefit from their expenditure; that the moneys derived from this taxation, under the county levy, will all be expended within the organized county of Kay; that plaintiffs are non-residents of the Territory, and that neither they or their property are within said county of Kay, and therefore cannot be benefited by the expenditure of moneys apportioned and used for the salary fund, contingent expense fund, sinking fund, court expense fund, county supplies fund, road and bridge fund, poor fund, or county school fund of said county.

We have been cited to or been able to find but one authority directly in point upon the proposition as presented in this case. In the case of Ferris *v.* Vennier, 42 N. W. Rep., 34, the supreme court of Dakota Territory, in a case similar to this in all particulars save that the attached territory was not an Indian reservation, but was unorganized territory, held the levy for territorial purposes to be valid and those for county purposes to be invalid. There are a number of authorities upon analigous cases, but such authorities are conflicting. The greater number of authorities presented by counsel for plaintiffs in their brief upon this proposition relate to cases of special assessments for local improvement, such as the construction of highways, streets, pavements, sewers, etc., where the benefits are peculiar to a limited district or locality, and this class of cases have always been held distinct in principle from that which we are considering, and the right to impose such taxes has always been held to be founded upon and to be governed by different principles from those embraced in public taxation for ordinary public or governmental purposes.

Bearing upon the case at bar is the case of Wells *v.* The City of Weston, 22 Mo., 364, in which the court held that "the legislature cannot authorize a municipal corporation to tax for its own local purposes land lying beyond the corporate limits."

27 In Cheany *v.* Hooser, 9 Ben. Monroe, 341, the court held that the extension of the limits of one town so as to include the adjacent lands of another town against or without the consent of the owners and subject the property and people within the added territory to the jurisdiction and taxing powers of the extended municipal government without the consent of the added population is in effect taking private property for public use.

In Sharpless *v.* Mayor of Philadelphia, 21 Penn. State, 172, the court said: "By taxation is meant a certain mode of raising revenue for a public purpose in which the community that pays it has an interest; but to make a tax law unconstitutional on this ground it must be apparent at the first blush that the community

taxed can have no possible interest in the purpose to which their money is to be applied; and this is more especially true if it be a local tax and if the local authorities have themselves laid the tax in pursuance of an act of the assembly."

In a case in Tennessee, Taylor, McBean & Co. *v.* William R. Chandler *et al.*, 9 Heiskell, 349, the court said: "A State burden cannot be placed upon any territory less than the entire State nor a county burden upon territory greater or smaller than the county."

In case of Washington Avenue, 69 Penn. State, 361, the learned judge delivering the opinion says:

"I admit that the powers to tax is unbounded by any express limit in the Constitution; that it may be exercised to the full extent of the public exigency. I concede that it differs from the power of eminent domain, and has no thought of compensation by way of a return for that which is taken and applied to the public good further than all derive benefit from the purpose to which it is applied."

In Morford *v.* Unger, 8 Iowa, 82, the court said:

"The extension of the limits of a city or town so as to include its actual enlargement as manifested by houses and population is to be deemed a legitimate exercise of legislative power. An indefinite or unreasonable extension so as to embrace lands and farms that are distant from the local government does not rest upon the same authority; and although it may be a delicate as well as a difficult duty for the judiciary to interpose, we have no doubt but that there are limits beyond which the legislative discretion cannot go."

Kelley *v.* The City of Pittsburg, 104 U. S., 658, was a case wherein the city of Pittsburg under an act of the legislature extended the city limits so as to include the plaintiff's farm, and assessed the same as other property in the city was assessed for street tax, school tax, etc. The court, in sustaining the validity of the extension, said:

"We cannot say judicially that Mr. Kelley received no benefit from the city organization; these streets, if they do not penetrate his farm, lead to it. The water works will probably reach him some day, and may be near enough him now to serve on some occasions. The schools may receive his children, and in this regard he can be in no worse condition than those living in the city having no children and who pay for the support of the schools. Every man in a county, a town, a city, a State is deeply interested in the education of the children of the community, because his peace and quiet, his happiness and prosperity, are largely dependent upon the intelligence and moral training which it is the object of the public schools to supply to the children of his neighbors and associates if he has none himself. The police government, the officers whose duty it is to punish and prevent crime, are paid out of the taxes. He has no interest in their protection, because he lives farther from the court-house and the police station than the others. Clearly these are matters of detail within the legislative discretion, and therefore of power in the law-making body within whose jurisdic

tion the parties live. This court cannot say in such cases, however great the hardships or unequal the burden, that the tax collected for such purposes is taking the property of the tax-payers without due process of law."

I might multiply citations from conflicting authorities like these without finding any rule to guide or definitely determine where the line can be drawn which determines, in cases like this, the limit of legislative discretion.

Nearly if not all these cases arose to test the extent and limit of authority in subordinate agencies of the State, like municipal corporations, and not the discretion vested in the legislature of the State. No court has yet attempted to define specifically the benefits that a tax-payer must receive from government in order to make valid the public taxes taken from him. True, in theory, taxation should be equal not only in its burdens, but in its benefits, but this equality is never attained. No one questions the right of a Commonwealth to tax the property of non-residents within its borders,
28 yet such non-residents do not stand upon a basis of equality in the benefits of the government that imposes the tax. They may or may not receive particular benefits from its courts, its schools, the improvement of its public highways, or from any of the other purposes to which its revenues are appropriated; but such benefits are never a test of the liability of their property to taxation. The plaintiffs in this case might have their herds of cattle within the limits of Kay county and receive no greater benefit in the protection of the laws than they do now, yet they would not be heard to assert that such property should not be taxed for the various county purposes to which taxation is appropriated.

The counties, cities, and towns of this Territory are not independent or distinct governments from that of the Territory. They are a part of that government. They are the instrumentalities and agencies through which the territorial government promotes the welfare of its inhabitants and through which the Territory is better enabled to protect the lives and liberties of its inhabitants and the property that is within its borders, whether that of its own citizens or that of non-residents. The nearer these purposes are attained the greater are the benefits to these plaintiffs, as well as to all others having property subject to the protection of its laws.

Laws similar to this, attaching unorganized territory to municipal townships in the State of Michigan, were for years maintained and enforced, and though the taxes gathered from the attached territory was appropriated and expended for the purposes of the township to which it was attached, I do not find that their validity was ever directly called into question.

Roscommon *v.* Midland, 39 Mich., 424.

Township of Comins *v.* Township of Harrisville, 45 Mich., 442.

In this last case the facts found by the court were that from the year 1869 until March, 1877, the county of Oscoda was attached to the county of Alcona for judicial and municipal purposes, and up

to the last-named date the township of Harrisville, in said Alcona county, exercised municipal jurisdiction over the territory comprising the unorganized county of Oscoda; that in 1877 the legislature organized the county of Oscoda *unto* a township called, by the act creating it, "the township of Comins." In that year and after the passage of said act, but before said township of Comins had been fully organized by the election of township officers, the township of Harrisville made an assessment-roll embracing, with other territory, all the territory in the county of Oscoda, and the taxes thus assessed were collected by the officers of the township of Harrisville. In 1879 the township of Comins made a demand on the township board of the township of Harrisville for the payment to the township of Comins for the taxes thus collected in 1877, and suit was brought therefor. On that case, Marston, chief justice, says:

"The laws of this State relating to the assessment, levy, and collection of taxes does not regard certain designated territory as a township until the proper officers necessary to conduct its affairs have been elected. The officers of the new township not having been elected until July, there was no such perfected organization as would enable that township to assess the township and school taxes for that year. Under such circumstances, in my opinion, the township of Harrisville had a right to levy and collect the taxes in question; but whether they did *nor* not, the present action will not lie to recover the money so collected."

I can perceive no distinction, in principle, between that case and the case at bar, and, although the legality of the assessment and collection of the taxes imposed was not directly involved in the case, both the circuit judge, trying the case, and the chief justice express no doubt as to their legality.

Not being able to point — the provision in the Constitution, the organic act in any statute or general rule limiting the powers and discretion of the legislature in imposing these taxes, from which I can say that they are unquestionably void, I am not disposed to arbitrarily invade the province of the legislative department to sit in review without other evidence than that which they possessed and say that in this case they have abused the discretion vested in them to such a degree as to call for our interference. Under the general rules stated herein we have no right to do this. This
29 taxation may not be levied upon the basis of absolute equality. It may in a measure be unjust. It may impose upon the plaintiffs in this case a burden without equal compensation in benefits with others, but this alone will not warrant our interference.

Unquestionably the plaintiffs are benefited in some degree by the expenditure of these taxes in Kay county. The proximity to their property of a well-ordered community, with courts and schools open to the plaintiffs if they wish to avail themselves of them, with good roads and bridges, with provision made for the care and maintenance of the poor and indigent, with these and other elements of civilization, order, and observance of law for which money obtained by taxation is expended, it is beyond dispute that plaintiffs have a

greater security in their property rights than they would have without them. These are the benefits upon which the right of taxation is based and gives to the legislature the acknowledged authority to impose taxation. The authority being acknowledged, the reasonableness of or necessity for its exercise cannot be inquired into by the courts. Of such reasonableness or necessity the legislature and not the courts are to judge.

The validity of these taxes is further assailed on the ground that the act of the legislature authorizing them is obnoxious to the act of Congress of July 30, 1886, 24 U. S. Stat. at Large, page 170, which provides as follows:

"That the legislature of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases—that is to say, * * * for the assessment and collection of taxes for territorial, county, township, or road purposes."

It is insisted that the act in question is local and special. I cannot perceive how this contention can be sustained. The act has none of the elements of a local or special law. It does not operate upon an individual or a number of designated individuals or upon particularly designated property. It operates upon any individual and upon any property that may come within its general provisions. Mr. Cooley, in his work on Constitutional Limitations, page 480, says:

"The authority that legislates for the State at large must determine whether particular rules shall extend to the whole State and all its citizens, or, on the other hand, to a subdivision of the State or a single class of its citizens only."

Again he says, page 481:

"If the laws be otherwise unobjectional all that can be required in these cases is that they be general in their application to the class or locality to which they apply, and they are then public in character, and of their propriety and policy the legislature must judge."

The constitutional requirement of equal protection of the laws does not make necessary the same local regulations, municipal powers, or judicial organization or jurisdiction.

Missouri *v.* Lewis, 101 U. S., 32.
Virginia *v.* Rives, 100 U. S., 313.
Ex parte Virginia, 100 U. S., 339.

The prohibition of special legislation for the benefit of individuals does not preclude laws for the benefit of particular classes; as, for example, mechanics and other laborers.

Davis *v.* State, 3 Lea, 376.

We think the case of Daily Leader *v.* Cameron, 3 Okla., 677, is decisive on this point. In that case this court says:

"A statute relating to persons or things as a class is a general law. One relating to particular persons or things of a class is special. The number of persons upon whom the law shall have

any direct effect may be very few by reason of the subject to which it relates, but it must operate equally and uniformly upon all brought within the relations and circumstances for which it provides. A statute, in order to avoid a conflict with the prohibition against such special legislation, must be general in its application to the class, and all of the class within like circumstances must come within its operation."

The statute in question in this case does not operate upon persons or things within a general class, but upon persons and things as a class. It operates upon all the unorganized counties, districts, and reservations within the Territory and upon property generally within such unorganized county, district, or reservation, and operates uniformally upon such several counties, districts, and reservations and upon the persons and things that may be brought therein, and is therefore in no sense local or special in its character.

It is further claimed that the act of 1895 violates the principle of uniformity in providing for an assessment of cattle kept and grazed on these Indian reservations and unorganized territory at a different time from that provided for the assessment of personal property in the organized counties; that for this reason it unjustly discriminates against the owner of such cattle and is therefore void.

I have already shown it to be a fundamental principle that the rules of taxation shall be uniform. It is of the very nature of a tax that it should be assessed according to some uniform rules; otherwise it would be confiscation and not taxation; but this does not mean that the time and method of assessment shall be identical, but only that after the legislature has declared what classes of property shall be subject to taxation the tax itself shall be levied upon such or the owner thereof according to a uniform rate of valuation.

Nelson Lumber Co. *v.* Town of Loraine, sup. ct. Wis., 22 Fed. Rep., 54.

Statutory provisions authorizing the assessment of different classes of property at different dates or of the same classes of property in different localities at different dates are so common that their validity for this reason is scarcely ever called in question. The revenue law of this Territory provides that real estate shall be valued for taxation on the first day of January, and that personal property in the counties shall be assessed on the first day of February of each year.

Counsel for plaintiffs in their brief ask, "What valid reason can be suggested why the property situated on these Indian reservations should be assessed and valued on one day and the property situated in the organized counties should be assessed and valued on another day?"

I think the answer to this question is found in the language of the supreme court of Wisconsin in Nelson Lumber Company *v.* Town of Loraine, *supra*, wherein it says:

"The purpose of the law would seem to be to bring about that substantial equality in taxation which the common law, as well as

the Constitution, requires. The legislature was aware that the logs of non-residents, as well as residents owners, were liable to be floated out of the State in the month of April or, if not run out of the State, might become mixed with the logs of other persons in the different streams in such a manner as to render it quite impracticable to take any separate account of them in the month of May, when the logs of resident owners were assessed. Very often they would be beyond the jurisdiction of the taxing officer of the town, and as the owner could not be reached and had no local agent in the State they escape- entirely. The law, by providing that the situation, amount, and value of the logs be taken in April at the place where piled or banked, seeks to put non-resident and resident owners on the same footing."

The legislature of this Territory, when they enacted the law of 1895, undoubtedly took into consideration the peculiar conditions and situation of the property to be taxed in these reservations; that nearly all of the cattle that were kept on these reservations were brought into the Territory after the first of February and would be removed before another listing of property for taxation, and unless a different date from that existing in the general law should be fixed for its assessment such property would entirely escape taxation. The very principle of uniformity required that this distinction in dates of assessment should be made. It was not an injustice against the owners of the property, but it was to prevent injustice to the Territory and to all its tax-paying citizens by prohibiting this property from escaping its just share of the burdens of taxation. I think this was a very proper exercise of the discretion of the legislature, and that no discrimination exists such as is inhibited by the organic act of the Territory and the act of Congress of July 30, 1886.

The final proposition contained in plaintiffs' brief, that relating to the action of the territorial board of equalization in raising the aggregate valuations of property returned from the county of Kay for the year 1895, having been fully considered and determined by this court, at this term, in the case of Wallace *vs.* Bullen and held adversely to the contention of the plaintiffs herein, fully disposes of this point.

31 For the reasons stated upon the various points submitted herein I am of the opinion that the legislature was vested with full authority to extend the revenue laws of the Territory over the Indian reservations and other unorganized territory within this Territory; that the act of 1895 was a proper exercise of such authority; that said act does not contravene any constitutional or other established rule of taxation; that I can find nothing in this record showing such abuse of the discretionary power of the legislature as warrants our interference; that the assessment and taxation of plaintiffs' property under said act and in the manner shown was valid. I think that it follows, therefore, that the action of the court below in overruling defendants' demurrer to plaintiffs' petition, in so far as it related to the assessment and levy of said taxes for county purposes and perpetuating the injunction against the

collection of such taxes, was erroneous, and the judgment of said court enjoining the collection of said taxes should be reversed and this cause be dismissed.

Scott, J., and McAtee, J., concurring to the extent of holding that the tax levied for territorial and court expense funds are valid, but also hold that the balance of the levies are unauthorized for the reason that the people on these reservations are not interested in such levies and receive no benefit from the expenditure of the moneys derived from such levied.

The judgment of the district court is affirmed. Dale, C. J., dissents. Bierer, J., who tried the case below, not sitting.

Filed Sept. 4th, 1896.
EDGAR W. JONES, *Clerk.*
S.

32 Be it further remembered that on the fourth day of September, A. D. 1896, the following opinion and decision was filed:

In the Supreme Court of the Territory of Oklahoma.

D. WAGONER *et al.*, Plaintiffs in Error,
vs.
NEIL W. EVANS *et al.*, Defendants in Error.

Error from the district court of Canadian county, Hon. John H. Burford, judge.

Horace Speed and W. W. Flood, attorneys for plaintiffs.
Thos. R. Reed, Co. att'y, and W. W. Bush, of counsel for defendants in error.

Per Curiam:

This case is, in the view we take of it, identical with the case of Gay and Reed *vs.* The County Commissioners of Kay County *et al.*, decided at this term of court, and the judgment of the trial court in this case is the same as that of the trial court in the case we have just decided, and without elaboration upon the questions presented judgment of the court below is affirmed.

(Filed Sept. 4th, 1896.
EDGAR W. JONES,
Clerk Sup. Court.)

33 And be it further remembered that on the 4th day of September, A. D. 1896, the following order and judgment were rendered in the supreme court:

D. WAGONER & SON *et al.*
v.
NEIL W. EVANS *et al.* } # 473.

The above cause having come on for decision on this the fourth day of September, A. D. 1896, and the court being fully advised in

the premises, it is therefore considered, ordered, and adjudged that the judgment of the lower court be, and the same is, in all things affirmed.

The defendants in the above-entitled cause, petitioners in error herein, now except to the judgment of the court and move the court for a review and rehearing, which is by the court overruled, and the said plaintiffs in error now in open court pray an appeal to the Supreme Court of the United States and give notice in open court that they do now appeal to the Supreme Court of the United States; which appeal is now by the court allowed, and sixty days are given to plaintiffs in error in which to perfect a record for appeal to the Supreme Court of the United States, and the court now directs that the entry of this order in the journal show that the amount involved in this suit is as to each petitioner above the sum of five thousand dollars in value, exclusive of interest and costs, and that it also involves the question of the validity and construction of a treaty between the United States and the Kiowa and Comanche tribes of Indians and the validity of an authority claimed by the plaintiffs in error to be exercised by them under such treaty and under a contract with said Indians under said treaty, and the question whether the rights of said Kiowa and Comanche Indians under said treaty are infringed by an act of the legislature of the Territory of Oklahoma, and that the decisions of those questions were each adverse to the petitioners in error and were adverse to the authority claimed to be exercised under such treaty and to the existence of such rights by said Indians and by said petitioners in error and to any infringement of such rights by the act of the legislature of the Territory of Oklahoma.

It is also ordered that the petitioners in error execute an appeal bond, payable to the defendants in error as their interests may appear, conditioned to pay all costs and damages that may be awarded against them.

34 Be it further remembered that on the fourth day of September, A. D. 1896, the following further proceedings were had, to wit:

TERRITORY OF OKLAHOMA:

In the Supreme Court.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

The above-named appellants, plaintiffs below, D. Wagoner and W. T. Wagoner, copartners under the firm name of D. Wagoner & Son, and S. B. Burnett, conceiving themselves aggrieved by the order, judgment, and decree entered by the supreme court of Oklahoma Territory on the 4th day of September, 1896, do hereby severally appeal from said order, judgment, and decree to the Supreme Court of the United States, and pray that this their appeal may be al-

lowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

W. W. FLOOD,
HORACE SPEED,
Att'ys for Appellants.

And at the same time come the appellees, defendants below, Neil W. Evans, as treasurer of Canadian county, and J. N. Canon, as sheriff of said county, and J. A. Osborn, W. H. Hutchinson, and H. B. Vasey, as county commissioners of said county and as board of county commissioners of said county, in Oklahoma Territory, conceiving themselves to be aggrieved by the order, judgment, and decree made in this cause by the supreme court of Oklahoma Territory on the 4th day of September, 1896, do hereby severally appeal from said order, judgment, and decree to the Supreme Court of the United States, and pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

T. R. REID,
W. W. BUSH,
Att'ys for Appellees.

And now, to wit, on this fourth day of September, 1896, it is ordered that the appeals be allowed as prayed for above, and that upon the approving of a proper bond by the appellants, conditioned to pay all costs and damages that be awarded against them or either of them, no further action shall be taken in the court below until the final determination of the cause in the Supreme Court of the United States.

FRANK DALE,
Chief Justice Supreme Court, Oklahoma Territory.

(Filed Sept. 4th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

35 UNITED STATES OF AMERICA, *ss:*

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

To D. Wagoner, W. T. Wagoner, and S. B. Burnett, and to Neil W. Evans, as treasurer of Canadian county, Oklahoma Territory; J. N. Cannon, as sheriff of Canadian county, Oklahoma Territory, and to J. A. Osborn, W. H. Hutchinson, and H. B. Vasey, as county commissioners of Canadian county, Oklahoma Territory, and as board of county commissioners of said county, in said Territory:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at

Washington on the 2nd Monday of October, 1896, pursuant to an appeal and to a cross-appeal filed in the office of the clerk of the supreme court of Oklahoma Territory, wherein D. Wagoner and W. T. Wagoner, copartners under the firm name of D. Wagoner & Son, and S. B. Burnett are appellants and Neil W. Evans, as treasurer of Canadian county; J. N. Cannon, as sheriff of said county, and J. A. Osborn, W. H. Hutchinson, and H. B. Vasey, as county commissioners of said county and as board of county commissioners of said county, are appellees and cross-appellees, to show cause, if any there by, why the order, judgment, and decree in said cause made by said supreme court should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 4th day of September, in the year of our Lord one thousand eight hundred and ninety-six.

FRANK DALE,
Chief Justice Supreme Court.

(Filed Sept. 4th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

36 And be it further remembered that on this the sixteenth day of October, A. D. 1896, the following papers, bonds, orders, and assignments of error were filed in the office of the clerk of this court:

TERRITORY OF OKLAHOMA:

In the Supreme Court.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

We hereby acknowledge service of citation to appear in this cause in the Supreme Court of the United States upon the appeal taken herein by the appellees and waive the further issue or service of such citation.

FLOOD, HUGHES & FOSTER AND
HORACE SPEED,
Attorneys for Appellants.

(Filed Oct. 16th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

TERRITORY OF OKLAHOMA:

In the Supreme Court.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

We hereby acknowledge service of citation to appear in this cause in the Supreme Court of the United States upon the appeal taken

herein by the appellants and waive the further issue or service of such citation.

THOS. R. REID,
W. W. BUSH,
Attorneys for Appellees.

(Filed Oct. 16th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

Supreme Court of the United States.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

The clerk will enter our appearance as counsel for the appellants herein.

HORACE SPEED AND
FLOOD, HUGHES & FOSTER.

Supreme Court of the United States.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

The clerk will enter our appearance as counsel for the respondents herein.

THOS. R. REID &
W. W. BUSH.

37 TERRITORY OF OKLAHOMA:

In the Supreme Court.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

Know all men by these presents that we, D. Wagoner, of Wise county, in the State of Texas; W. T. Wagoner, of Wise county, Texas, copartners, doing business under firm name of D. Wagoner & Son, in the State of Texas; S. B. Burnett, of Tarrant county, in the State of Texas, as principals, and M. B. Loyd and W. Scott, as sureties, are held and firmly bound unto Neil W. Evans, as treasurer of Canadian county, Oklahoma Territory, and J. N. Cannon, as sheriff of said county, and to J. A. Osborn, W. H. Hutchinson, and H. B. Vasey, as county commissioners of said county and as board of county commissioners of said county, in Oklahoma Territory, and to the Territory of Oklahoma in the sum of fifteen thousand dollars ($15,000); for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

The condition of this obligation is such that whereas the above-named D. Wagoner, W. T. Wagoner, and S. B. Burnett have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the supreme court of Oklahoma Territory, if the above-named D. Wagoner, W. T. Wagoner, and S. B. Burnett shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

D. WAGGONER.
W. T. WAGGONER.
S. B. BURNETT.
M. B. LOYD.
W. SCOTT.

Witnesses:

——— ———.

The above-named D. Wagoner and W. T. Wagoner, composing firm of D. Wagoner & Son, and S. B. Burnett and M. B. Loyd and W. Scott personally appeared before me this 13th day of October, 1896, and acknowledged the foregoing instrument to be their voluntary act and deed for the purposes set out therein.

[SEAL.]

W. D. PEAK,
Notary Public, Tarrant County, State of Texas.

Approved by me this 15th dav of October, 1896.

FRANK DALE,
Chief Justice Supreme Court, Oklahoma Territory.

Attest: EDGAR W. JONES,
[SEAL.] *Clerk Supreme Court.*

THE STATE OF TEXAS, }
County of Tarrant. }

I, John P. King, clerk of the county court of said county
38 (which is a court of record), do hereby certify that W. D. Peak, whose name is subscribed to the annexed instrument, was at the date of the same and is now a notary public in and for said county, duly commissioned and qualified and authorized by law to administer oaths and take acknowledgments of instruments, and full faith and credit are due to all his official acts as such.

And I do further certify that the signature attached to the annexed instrument is his proper signature and is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said county court, at my office, in Fort Worth, Texas, this 13th day of Oct., A. D. 1896.

[SEAL.]

JOHN P. KING,
Clerk County Court, Tarrant County, Texas.

(Filed Oct. 16th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

In the Supreme Court.

NEIL W. EVANS *et al.*, Appellants in Cross-appeal,
vs.
D. WAGONER *et al.*, Appellees in Cross-appeal.

Know all men by these presents that we, Neil W. Evans, as treasurer of Canadian county ; J. M. Cannon, sheriff of Canadian county, and W. H. Hutchinson, J. A. Osborn, and H. B. Vasey, as commissioners of Canadian county, Territory of Oklahoma, are held and firmly bound unto D. Wagoner, W. T. Wagoner, who are copartners in business under the firm name of D. Wagoner and Son, and S. B. Burnett, appellee in cross-appeal, in the sum of one thousand ($1,000) dollars ; for the payment *pf* which, well and truly to be made, we hereby bind ourselves and the county of Canadian, Territory of Oklahoma, firmly by these presents.

Witness our hands and seals this 7th day of October, 1896.

The condition of this obligation is such that whereas the above-named Neil W. Evans, treasurer of Canadian county ; J. M. Cannon, sheriff of Canadian county, and J. A. Osborn, H. B. Vasey, and W. H. Hutchinson, commissioners of Canadian county and Territory of Oklahoma as aforesaid, have prosecuted a cross-appeal to the Supreme Court of the United States to reverse the decree entered in the above-entitled suit by the supreme court of the Territory of Oklahoma :

Now, therefore, if the above-named Neil W. Evans, treasurer of Canadian county ; J. M. Cannon, sheriff of Canadian county, and W. H. Hutchinson, J. A. Osborn, and W. B. Vasey, county commissioners of Canadian county, Oklahoma Territory, shall prosecute said cross-appeal to effect and answer all costs resulting from said cross-appeal if it be so adjudged, then this obligation shall be null and void ; otherwise to remain in full force and virtue.

NEIL W. EVANS, *Co. Treasurer.*
JOHN M. CANON, *Sheriff.*
W. H. HUTCHINSON, *2nd Dist.*
J. A. OSBORN, *1st Dist.*
H. B. VASEY, *3rd Dist.*

Personally appeared before me, the undersigned notary public in and for Canadian county, Oklahoma Territory, Neil W. Evans, treasurer of Canadian county ; J. M. Canon, sheriff Canadian county, and W. H. Hutchinson, H. B. Vasey, and J. A. Osborn, commissioners of Canadian county, Oklahoma Territory, and acknowledged the foregoing instrument to be their free and voluntary act and deed for the purposes therein mentioned.

SAMUEL J. RICHARDS,
Notary Public.

[SEAL.]

Approved by me this 15th day of October, 1896.

FRANK DALE,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

(Filed Oct. 16th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

40 UNITED STATES OF AMERICA:

In the Supreme Court.

D. WAGONER *et al.*, Appellants,
vs.
NEIL W. EVANS *et al.*, Appellees.

D. Wagoner and W. T. Wagoner, who are copartners in business under the firm name of D. Wagoner & Son, and S. B. Burnett, appellants, say that in the record and proceedings in the above-entitled case there is manifest error in this, to wit:

First. The court below erred in not reversing that part of the judgment of the district court within and for Canadian county, Oklahoma Territory, which held and adjudged that these appellants or either of them are liable to any part of the tax complained of in the complaint before said court set out in this record.

Second. The supreme court of Oklahoma Territory erred in holding that the appellants were liable for the taxes levied for territorial and judicial purposes for the year 1895.

Third. Said court erred in holding that the statute of Oklahoma under which said taxes were levied was not invalid for want of uniformity.

Fourth. The court erred in holding that the cattle of the appellants held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation under the statute of the Territory of Oklahoma.

Fifth. Said court erred in holding that the cattle of these appellants held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation for the judicial expenses of Canadian county.

Sixth. Said court erred in holding that the cattle of these appellants held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation for the territorial expenses of Oklahoma Territory.

Seventh. Said court erred in holding that while the general taxing statute of the Territory made cattle taxable on the first day of February, the statute of 1895 could lawfully make the cattle in the reservation attached for judicial purposes to Canadian county taxable on the first day of May.

Eighth. Said court erred in holding that while the general taxing statute of the Territory made cattle in the Territory generally taxable on the first day of February, a statute making cattle in part of the Territory taxable on the first day of May was not special legislation and invalid.

Ninth. Said court erred in holding that a tax such as that in question, which would, as averred in the complaint and admitted by the answer, largely decrease, if not destroy, the rentals, employment, and education as hardsmen which the Indians could and do get under said leases of their tribal lands, would not injuriously damage or infringe upon the rights of the Indians, under the treaties and laws of the United States, to the lands of the said reservation set apart to their absolute and undisturbed use and occupation, and did not disturb such use or occupation or make the same less absolute.

Tenth. Said court erred in holding that the true construction of the treaties under which the Kiowa and Comanche tribes of Indians used and occupied said reservation did not protect from taxation by Canadian county and Oklahoma Territory the cattle held in said reservation by said Indians or under pasturage contracts with said Indians.

Wherefore appellants pray that so much of the judgment of the court below as holds appellants liable for the levy of any tax be reversed and judgment rendered by the court that appellants
41 are not liable therefor, and that this cause be remanded with direction to enjoin the appellees from proceeding further to collect said taxes or any part thereof, and for all other proper relief in the premises.

HORACE SPEED AND
FLOOD, HUGHES & GOSTER,
Attorneys for Appellants.

(Filed Oct. 16th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

42 UNITED STATES OF AMERICA:

In the Supreme Court.

NEAL W. EVANS *et al.*, Appellants in Cross-appeal,
vs.
D. WAGONER *et al.*, Appellees in Cross-appeal.
} Assignment of Errors.

The appellants on cross-appeal, Neal W. Evans, treasurer of Canadian county; J. M. Canon, sheriff of Canadian county; W. H. Hutchinson, H. B Vasey, and J. A. Osborn, as county commissioners of Canadian county, Oklahoma Territory, say that in the record and proceedings in the above-entitled cause there is manifest error, in this, to wit:

First. The court below erred in affirming the judgment of the district court of Canadian county, Oklahoma Territory, which judgment overruled appellants' (on cross-appeal) demurrer to appellees' petition.

Second. Said court erred in failing to dissolve the injunction granted by the district court.

Third. Said court erred in rendering judgment only for the territorial tax of 1895 and the county tax for judicial purposes for the year 1895.

Fourth. The court erred in failing to decide and hold appellees liable for territorial taxes and all the county taxes assessed and levied for the years 1892, 1893, 1894, and 1895.

Fifth. The court erred in sustaining appellees' order of injunction to any extent.

Sixth. The court erred in not dissolving appellees' injunction as to the whole tax enjoined by them.

Wherefore appellants on cross-appeal pray that so much of the judgment of the court below as holds appellees on the cross-appeal not liable for any of the taxes, territorial or county, for the years 1892, 1893, and 1894, and for all the county taxes for the year 1895, be reversed, and judgment rendered by this court; that appellees on this cross-appeal are liable therefor, and that this cause be remanded with proper directions to the court below, and for all proper relief in the premises.

THOS. R. REID,
County Attorney of Canadian County, O. T., and
W. W. BUSH,
Counsel for Appellants on Cross-appeal.

(Filed Oct. 16th, 1896.
EDGAR W. JONES,
Clerk Supreme Court.)

43 UNITED STATES OF AMERICA, }
Territory of Oklahoma. }

I, Edgar W. Jones, clerk of the supreme court of the Territory of Oklahoma, do hereby certify the above and foregoing to be a true and complete copy and transcript of the entire record and proceedings in case # 473, D. Wagoner *et al. vs.* Neil W. Evans *et al.*, including the opinion of the supreme court in the case of Gay and Reed against The County Commissioners of Kay County *et al.*, referred to in the decision herein, as shown by the records in my office.

Seal Supreme Court, Territory of Oklahoma.

Given under my hand and the seal of said court, at my office, in the city of Guthrie, on this the 17th day of October, A. D. 1896.

EDGAR W. JONES,
Clerk of the Supreme Court.

[Endorsed:] Filed Oct. 16, 1896. Edgar W. Jones, clerk. S.

7—640

Endorsed on cover: Case No. 16,419. Oklahoma Territory supreme court. Term No., 640. D. Wagoner and W. T. Wagoner, copartners under the firm name of D. Wagoner & Son, and S. B. Burnett, appellants, *vs.* Neil W. Evans, treasurer of Canadian county; J. N. Canon, sheriff of Canadian county, *et al.* Filed October 26, 1896. Term No., 656. Case No. 16,435. Neil W. Evans, treasurer of Canadian county; J. N. Canon, sheriff of Canadian county, *et al.*, appellants, *vs.* D. Wagoner and W. T. Wagoner, copartners under the firm name of D. Wagoner & Son, and S. B. Burnett. Filed November 21st, 1896.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 252.

WAGONER AND OTHERS

vs.

NEIL W. EVANS AND OTHERS.

No. 262.

NEIL W. EVANS AND OTHERS

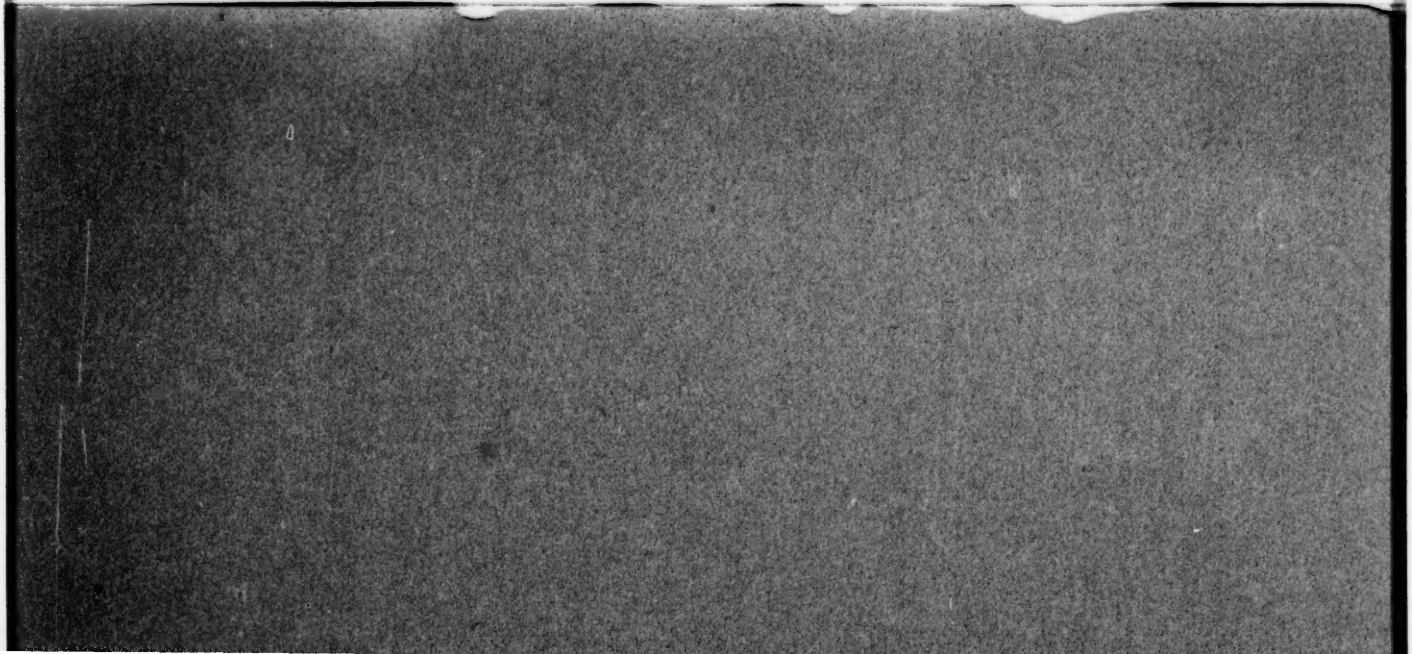
vs.

WAGONER AND OTHERS.

BRIEF FOR WAGONER AND OTHERS.

A. H. GARLAND,
R. C. GARLAND,
Attorneys for Wagoner and Others.

McGILL & WALLACH, LAW PRINTERS, Washington, D. C.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

WAGONER AND OTHERS
vs.
NEIL W. EVANS AND OTHERS. } No. 252.

NEIL W. EVANS AND OTHERS
vs.
WAGONER AND OTHERS. } No. 262.

Brief for Wagoner and Others.

These are cross-appeals from the Supreme Court of Oklahoma Territory and may be considered together, as one case.

To a large extent these cases have been presented in argument to the court on cross-appeals (287 and 439) at this term, but while this is substantially so, there is still a distinction in these cases favorable to Wagoner and others, that does not arise in the others.

It will be observed by the court that this case (taken as one) was not elaborated in the opinion of the court

below (Rec. 40), but was disposed of on the opinion of that court, delivered in *Gay and others* vs. *The County Com's, etc.*, and that opinion is in full in the record here, p. 21–40, and the case is now submitted to the court on cross-appeals, as above indicated (287 and 436).

As there has been so much argument before the court on the points similar in the several cases alluded to, we will not enter into a full discussion of them, but present the points we rely upon in brief, and then devote our attention to an analysis of the opinion of the trial court.

The taxes sought to be imposed here are claimed under section 13, article 2, chapter 70, of the Oklahoma statutes, 1893. (Running section 5593), as amended by the act of March 5, 1895 (Session Laws, 1895, page 232). This section was taken from section 6144, of the Oklahoma statutes, 1890. In a former action, the old statute was held unconstitutional and void.

I.

The act of 1895 certainly gives no authority for taxing property prior to the date of its passage, and there could be no ground for taxing the property for the years 1892, 1893, and 1894. Upon this point the court held for Wagoner and others.

II.

The act of 1895 provides only for a tax on cattle and like personal property. In such cases the rule of *noscitur a sociis* determines the subjects to which the act refers. If the act has been intended to cover all personal property of every character, it would have left out of the first line the words, "any cattle are kept or grazed or any other." The only possible reason for inserting

these words is to limit the class of property to be taxed, to cattle and personal property of like kinds.

That such is the limitation see

Sutherland Stat. Const., Secs. 268, 269, 274, 275, 262.
Reiche v. *Smythe*, 13 Wall., 162.
People v. *Ry.*, 84 N. Y., 565.

III.

The act in question also provides, while the tax on personalty in Canadian county under the general statutes is to be assessed as on the first of February, the cattle on the reservation are to be assessed as on the first of May.

The court takes judicial cognizance of matters of general information within the jurisdiction. It judicially knows, therefore, that the taxing of property on the first of February is the general rule of the Territory, and taxing particular property in a particular locality would not be uniform but repugnant to the rule of general taxation. That the cattle include young stock which would not be taxable in February, but would be taxable in May; that the value of the stock is greater after it has grown and been fed three months longer; that it is in better condition and more salable at better prices in May than in February.

IV.

This is special legislation, which is prohibited by the organic act and by the laws of the Territory, and by the act of Congress of July 30, 1886 (24 Stat. L., 170). The latter statute provides that the Legislature shall not pass local or special laws in any of the cases there enu

merated, including, " For the assessment and collection of taxes for territorial, county, township or road purposes."

V.

The statute is also invalid for want of uniformity with the general statute in this, that it furnishes a complete instrument by which all personal property in Canadian county and in the reservation, and all personal property in the Territory which can be moved, may escape taxation. All that is necessary under that statute is that the property shall be in the reservation on the first of February ; it will then not be liable to taxation in Canadian county. It can then be taken from the reservation to Canadian county and will not be liable for taxation in the reservation. Special and irregular legislation of this character has been repudiated and set aside by every court before which it has been brought.

VI.

The statute is also invalid for want of uniformity in fixing the time of taxing in the reservation at a different time from taxing in the county to which it is attached.

No clearer statement of the law could be asked for than is found in

County Commissioners v. *Wilson*, 15 Colo., 93–98.,
Graham v. *Commissioners*, 31 Kansas, 473–478.
People v. *Townsend*, 56 Cal., 637.

VII.

The statute is also invalid in this, that it seeks to tax the property in the Comanche reservation for the county expenses of Canadian county, of which the people or the

cattle in the reservation get no benefit whatever. It seeks to tax them for the schools, for bridges and roads in Canadian county, for the interest and sinking fund of the old debts of Canadian county, for the court expenses of Canadian county, when the act of Congress especially provides that the court expenses from cases arising in the Indian reservation shall be paid by the United States Government. (See Section II, act of March 2, 1889, 25 Stat. L., 980, Section 11.)

Wherever a statute has attempted to tax one locality to pay the debts, or raise revenue for another, the courts have held it unconstitutional and illegal as exceeding the legislative power, upon the ground that it is not legislation, but is an attempt to take the property of one set of persons to pay the debt of another, and is practically an attempt at confiscation.

Ferris v. *Vannier*, 6 Dakota, 186–192.
Cooley Tax. (2d Ed.), 141, 142, 159, 160.
Wells v. *Weston*, 22 Mo., 384; 66 Am. Dec., 627.
People v. *Townsend*, 56 Cal., 636.
Cooley's Const. Lim., 615.
In re. Town of Flatbush, 60 New York, 406.
Bergen v. *Clarkson*, 6 N. J. Law, 352.
Bromley v. *Reynolds*, 2 Utah, 525.

The act is invalid for the further reason that it infringes upon the treaty rights of the Comanche Indians. The Comanche Indians, like all other Indian tribes retaining tribal government, are recognized as a separate community, having their own laws and customs and their own separate district of country, and are not liable to taxation.

Kansas Indians and New York Indians, 5 Wall, 756, 757, 758, 759, 760, and 769.

By Article 16 of the treaty of October 21, 1867, the Comanche reservation was set apart by the government as "the permanent home" of the tribe. By Article 1, this reservation was "set apart for the absolute and undisturbed use and occupation of the tribes named" therein, and no persons except such as hold official positions under the Government were ever to be permitted by the Government to pass over, settle upon, or reside within that reservation. The organic act reserved to the Indian tribes all the rights under the treaties. It provides that counties shall be marked out by the Governor of the Territory, and that the reservations shall be attached for judicial purposes, by order of the court. Subsequently recognizing the practice which had then been in effect for some years, Congress passed an act providing that the Indian tribes might lease lands in their reservations for grazing purposes, the contract to be approved by the Secretary of the Interior.

These treaties must be construed most favorably for the Indians in all cases.

Hanenstein v. *Lynham*, 100 U. S., 483.
70 Fed. Rep., 605.
Kansas Indians, 5 Wall, 760.
The Choctaw Case, 119 U. S., 1.

Under these treaties and these laws Wagoner and others have leased lands from the Comanche tribe for grazing purposes and have put cattle upon this land. The terms of the contract are substantially that the lessee pay about six cents per acre for the land, and hire, at good wages, a considerable number of Indian men as herdsmen for them. Lands of substantially like character in Texas adjacent to this are rented for grazing purposes at a minimum of two cents per acre, and an actual average of three cents per acre.

These facts are stated in the petition, admitted by the answer and are absolutely true.

It is unquestionably true that if this proposed tax could be imposed upon the lessees' cattle, the income to the Indians must be necessarily lessened thereby. Competition must have been resorted to, and as a fact we know has been resorted to in the shape of advertising abroad generally, by the Department of the Interior, in the papers through all the country for bids, and as a result the Indian lands are leased at a higher rate than the adjoining lands in the State of Texas—practically twice as high. It is a demonstration; it needs no argument to show; that a tax which lessens the rental which the tribes receive for the use of its land does infringe upon, and does lessen the use which the tribe has of the land. The treaties provided for an absolute undisturbed use and occupation. It can not be an absolute undisturbed use, if the tax gatherer can come in and destrain the cattle the Indians are pasturing there.

"The power to tax is a power to destroy."

The cattle tax act and the transient cattle act of 1895 (Session Laws, pages 230-232), were adopted, apparently, from the statutes of Colorado, California and Kansas. The courts of these States declared them unconstitutional and void:

Commissioners v. *Dunn*, 40 Pac. Rep., 357;
County Commissioners v. *Wilson*, 15 Colorado, 90;
Graham v. *Commissioners*, 31 Kansas, 473;
People v. *Townsend*, 56 Cal., 633.

Attaching the reservation to Canadian county for judicial purposes did not attach it to Canadian county for any other purpose.

Yellow Stone Co. v. *Railroad Company*, 24 Pac. Rep., 1058.

The organic act giving the court power to attach reservations to counties for judicial purposes excludes the idea that they are to be attached by them, or any other body, to the county for any other purposes.

We note as authorities cited by us the treaty of 1867, 15 U. S. Statute at Large, 581.

Worcester v. *State of Georgia*, 6 Pet., 515.

Section 7 of the Georgia act is set out in the Worcester case, at page 523, line 6.

That the Cherokee lands were within the boundaries of Georgia is shown at the top of page 542.

That the section requiring a license was the one considered a violation of the treaty rights as shown at page 542.

That the Indian tribes are distinct *political* communities is set out at top of pages 557, 559, 561.

That the requirement of a license was repugnant to the treaty rights of the Cherokees and invaded the jurisdiction of the United States is set out at pages 561–562.

* * * * * * *

That the statute of 1895 was and is special legislation is beyond doubt. If not *special* legislation, it need not have been passed, as the general statute then in effect would have been all sufficient.

If not special legislation, it conflicts with the general statute as to time and mode of assessments.

It is special legislation, and therefore in violation of the act of Congress of 1886. (24 Stat. L., 170.)

State v. *Philbrick*, 15 Atl., 579.

A case giving exceptional directions for taxing persons and property at seaside resorts was held special and void.

In order to get at just what the court below did decide we are compelled to repeat somewhat and restate the issue here. This was a bill filed in the district court

of Canadian county, Oklahoma Territory, by Wagoner and others, seeking to enjoin the appellees from the collection of tax sought to be imposed on the stock of Wagoner and others, which they were herding and grazing on lands leased by them from the Kiowa, Comanche and Apache Indians and under the authority of the United States Government.

These lands were situated in the Kiowa and Comanche reservation, which had been set apart under the treaty concluded October 21, 1867, and after ratification proclaimed, August 25, 1868, "for the absolute and undisturbed use and occupation" of said tribes of Indians and such other friendly tribes or individual Indians as from time to time they may be willing (with the consent of the United States) to admit among them; that the treaty is now and has ever since been in force; that the area so embraced in this reservation was subsequently embraced within the present limits of Oklahoma Territory.

That under the organic act of the Territory of Oklahoma all the rights of the Indian tribes under treaties then in force on reservations within the limits of such Territory were continued to the Indians thereon.

That this reservation had been attached to the county of Canadian for judicial purposes, but that the reservation was not included in any political or other subdivision of such county, nor had the reservation in any respect had any of its area set apart in any political subdivision.

That such tribes since the treaty had been in the absolute and undisturbed use and occupation of the reservation, as by law they were entitled to.

That under such use and occupation the tribes and individual members thereof had large herds of cattle and horses on the reservation.

That they have leased, under the authority of the Government of the United States and the approval of the proper officers, portions of the reservation to the appellants (Wagoner and others) under proper contracts in pursuance of such treaty, and the act of Congress in reference to the leasing of lands within the reservation.

That long prior to the act of Congress these appellants (Wagoner and others) had been making similar leases of lands in such reservation for grazing purposes, and been using the same as tenants and lessees of and under those Indians. That under existing contracts these appellants have many thousand head of cattle on the respective portions of the reservation so leased by them, as well as many horses necessary for the handling and management of the cattle

That they have no other effects on or in the reservation. That they pay large sums of money semi-annually for the use of the portions so leased by them—in the aggregate not less than $40,000 annually; that in addition to their contracts of lease they employ a large number of Indians in herding their cattle, and to whom they pay as much as is given to the most proficient employés in this line; that this was made a condition precedent by the United States authorities; that such employment should be given members of these tribes for the purpose of alienating them from their tribal relations; that these appellants are citizens of and reside in the State of Texas.

That the tax sought to be collected was in pursuance of an act of the Legislature of Oklahoma Territory, and was for purposes pertaining to Canadian county, and not for the Kiowa or Comanche reservation and for territorial and judicial purposes.

That this tax for territorial and judicial purposes will only be considered in this connection.

This was alleged to be illegal and void on many grounds not necessary here to enter into, other than it was especially invalid—in that it deprived these tribes of Indians of their rights under this treaty and largely decreased, if not destroyed the rentals, employment, and education as herdsmen, which these Indians could and do get under their leases of these lands, and thus infringe upon and impair their rights to these lands under the treaty and laws of the United States. In other words, it is more directly in contact with the rights of the Indians and greatly to their injury.

This cause came on for trial in the District Court of Canadian county on the answer and an agreed statement of facts, which in no sense controverted the material allegations in this bill, but expressly admitted them, and that court held that all of such tax, except that for territorial and judicial expenses of Canadian county, were invalid. (Rec., 17–31.)

On appeal to the Supreme Court of the Territory, the judgment of the District Court of Canadian county was affirmed, and from that judgment appeal is now taken to this court. (Rec., 40.)

The jurisdictional amount is found. (Rec., 41.)

The ninth assignment of error presents the only question we desire now to consider, and is as follows:

The court erred in holding that a tax such as that in question, which would, as averred in the complaint and admitted by the answer, largely decrease, if not destroy, the rentals, employment and education as herdsmen, which the Indians could and do get under such leases of their tribal lands, would not injuriously impair or infringe upon the rights of the Indians under the treaties and laws of the United States to the lands of this reservation, set apart to their absolute and undisturbed use and occupation, and did not disturb such use or occupation or make the same less absolute. (Rec., 48.)

Before entering upon the investigation of the question and the ground upon which the court placed the authority of the Oklahoma Territory to levy the tax in question, on the property of these appellants (Wagoner and others) grazing on lands leased by them in the Kiowa and Comanche reservation, and from the Indians for whose use their reservation was set apart, we beg to call attention to the fact that this case was held to be in the view the trial court took of it, identical with the case of *Gay & Reed* vs. *The County Commissioners of Kay County*, as before stated, and the same judgment was rendered in this case as in that. But, on investigation, we dare say it will be found to be materially different, in essential respects, from the bill or complaint in this cause, and especially in these respects.

1. That the lease in that case was made in the Osage reservation, and was doubtless made under the acts of Congress authorizing such leases, and was doubtless one under competitive bids, and largely left discretionary with the respective agents in the several land reservations in Oklahoma.

2. That there was no condition precedent in the Osage reservation that the lessees should be required to employ certain members of the Indians of those tribes for the purpose of herding the stock grazed on the leased lands by the lessees for the specific purposes, in addition to the wages paid them, of estranging them from tribal habits, and

3. In other respects, which will be apparent on inspection of the several complaints in the two causes.

The court, in disposing of the case of *Gay & Reed* vs. *The County Commissioners of Kay County*, in effect held: that if there was no stipulation in the treaty of any of these Indians with the United States whereby their respective reservations were not to be included within the limits of any State or Territory; that the au-

thority of the Territory wherein such reservation might be situated may rightfully extend over such reservation in *all* matters of rightful legislation, not interfering with the persons or the property of the Indians within such reservation under the protection of the laws and authority of the United States, and as to all matters and subjects not interfering with that protection and not otherwise repugnant to the Constitution and laws of the United States, the legislative power of the Territory is absolute, and hence as the tax in question did not interfere with the persons and property of the Indians in such reservation, and did not seek to do so, but only to subject the property of persons having leases therein; that the same was valid and rightful legislation, and insists that there is no proposition better settled by authorities than this. Let us examine these authorities, cited to sustain this proposition, and see if they go to that extent, and further, that if, upon these very authorities it may not reasonably be concluded, under the admitted facts averred in this complaint, that the absolute and undisturbed use and occupation which was vouchsafed to these Indians under their treaty with the United States to the lands in their reservation leased by these appellants has not been impaired or diminished by the operation of this tax law, if permitted to stand, and will not they be deprived thereby of earning wages as herdsmen and the other benefits accruing to them from such employment?

First.

The case of the *Utah and Northern Railway* vs. *Fisher*, 116 U. S., 28.

In this case, under the law of the Territory of Idaho, there was assessed against the property of this railroad lying within the Fort Hill Indian Reservation in said

territory, a tax of $4,478 for Territorial and county purpose. This tax was resisted on the ground that this reservation was not within the general jurisdiction of the Territory, and whilst it was not excluded therefrom in specific terms by its treaty stipulations, yet by the terms of such treaty, whereby it was guaranteed to the Indians "they should have the absolute and undisturbed use and occupation of the reservation, and no person should be permitted to pass through, settle upon or reside in the reservation" other than those designated in the treaty, was as an effectual exclusion of the reservation from the general jurisdiction of the Territory as if it had been so excluded in specific terms. The court held to uphold that jurisdiction in all cases, and to the fullest extent would undoubtedly interfere with the enforcement of the treaty stipulations, but it is not necessary to insist on such general jurisdiction for the Indians to enjoy the full benefit of the stipulations for their protection. The authority of the Territory may rightfully extend to all matters not interfering with that protection. But it will be observed this is pure dicta and not necessary to the decision of this case, because it further appears in the opinion that under an Act of Congress of July 3d, 1882, ratifying an agreement between these Indians and the United States, that a cession had been made by the Indians to the United States of the right of way and other grounds necessary for the operation of this road in this reservation to the United States, and this same right of way, relinquished by the Government to this railroad, and hence, as matter of law, it was in no sense in or upon the reservation, and was so held by the court.

But under the broadest terms of the dicta of this decision, it is clear that no jurisdiction exercised or sought to be exercised by a Territory over a reservation within its limits, will be permitted when it will impair to their

detriment any of the rights guaranteed under the treaties made with them, for the full benefit of such protection is recognized in the dicta of this decision. Then

Second.

The case of *Langford* vs. *Monteith*, 102 U. S., 145.

This case holds, that where reservation located within a Territory and a treaty stipulation excluded it from area of the Territory, the land held by them is part of the Territory and subject to its jurisdiction, so *that process may* run there, however the Indians themselves may be exempt from that jurisdiction. But this decision was made rather to explain or qualify *Harkness* vs. *Hyde* 98 U. S., 475, wherein it was held; process could not run into an Indian reservation situated within a Territory for purpose of serving an individual with process residing therein under the mistaken apprehension in that case that there was a treaty stipulation excluding it from the area of the Territory. For the contention by plaintiff was to recover by forcible detainer, a house and grounds of the defendant occupied by him under an Indian agent for the Government of the United States among the Nez Percé Indians.

The defendant pleaded he was occupying the premises under an Indian agent, and that the property was situated within a reservation to which the Indian title had never been extinguished, and hence no part of the Territory of Idaho. But there was no treaty stipulations excluding this reservation from the territory of Idaho, and hence the only question to be decided in this case was whether the ordinary process issuing from the courts of this Territory could extend into this reservation, and no right of any Indian or Indian tribes was involved in this controversy. Then

Third.

The Phoenix & Maricopa R. R. Company vs. *Arizona Territory*, Sup. Ct. of Arizona, 26 Pac. Rep., 310, and

Maricopa & Phoenix R. R. Co. vs. *Arizona Territory*, 156 U. S., 347.

These cases are the same, having been appealed from the Supreme Court of Arizona, and involve the validity of a tax imposed by the Territory on that part of the railroad lying within an Indian reservation in that Territory. But this reservation was created after the organization of the Territory and the railroad was permitted, by an act of Congress, to locate, construct, and equip a railway and telegraph line through the Indian reservation in the Territory of Arizona, known as the Gila River reservation. It was conceded that there was no treaty with the Indians for whose benefit the reservation was established, limiting the power of Congress to grant to the railroad the rights conveyed. That was valid exercise of power. And to the extent of the grant and for the purposes thereof, this operated to withdraw the land on which railroad was located, from the prior act of reservation. Hence this road was held liable for the tax and there was no question in it involving any Indian's rights and no invasion thereof. Then

Fourth.

The case of *Torrey* vs. *Baldwin*, 26 Pac. Rep., 906.

This was a cause in the Supreme Court of Wyoming. Torrey brought suit in one of the district courts of Wyoming to restrain Baldwin, the treasurer of Fremont county, from collecting a tax of some $1,200 assessed against him on his live stock, horses, cattle, &c., ranging in the Shoshone Indian reservation in the geographical limits of Fremont county.

There was no treaty stipulation with these Indians, whereby their reservation should be excluded and excepted out of the territory in which such reservation was situated, and it was held that the reservation was included within the territory, and that cattle thereon belonging to a white man in no wise connected with the Indians was subject to taxation in the county within which the reservation lay. This party was in no way connected with the Indians; he was in the attitude of a trespasser, and hence it was held that no just rights of the Indians could be impaired by taxing the property of this plaintiff. These lessees are not trespassers, but are there with their cattle under most positive provisions of law.

All the other cases, cited to sustain the broad proposition laid down by the court, are of a criminal nature, and are but construing acts of Congress in reference to crimes, and have no bearing on the questions involved in this cause.

Then we fail to see, even by these authorities, how it is claimed and held by the trial court this cause is identical with the Kay county case.

All these cases, where taxes were sought to be assessed against railroads, are shown to have been withdrawn from the reservation through which they passed, and hence, in contemplation of law, were subject to the general law of the Territory.

But in no sense has it been apparent from the record in these cases, that they did sustain any such relation to the Indians through whose reservation they passed; that any of the rights or privileges of the Indians were thereby impaired; and in the case of *Railway* vs. *Fisher*, 116 U. S., 28, Justice Field so put it, and the conclusion is irresistible from that case that in such contingency the tax would have been held invalid.

In the case of *Torrey* vs. *Baldwin*, from Wyoming, the Supreme Court of that State distinctly held that it would impair no rights of the Indians in that reservation in which Torrey's cattle ranged to impose a tax on his property, because he was shown to have been a trespasser on that reservation, and the Indians were in no manner interested therein.

But the court insists this doctrine was distinctly announced, and so held by the Supreme Court of Oklahoma in *Keokuk* vs. *Ulam*, 38 Pac. Rep., 1080. An examination of that case will show that the tax therein imposed was on an Indian who had surrendered his tribal relations; had taken an allotment of his portion of the common reservation of his tribe, and had become a citizen of the Territory of Oklahoma to all intents and purposes, and therefore liable to taxation. The plaintiff in this case was Keokuk, an Indian of the Sac and Fox tribe; and it is too plain for argument that he or his property in any other contingency could have been taxed, and that, too, independent of any stipulations in the treaty between the tribe and the Government as to whether their reservation should be excluded from the limits of any State or Territory.

But the case at bar, we take it, is based on an entire different state of facts from any of those reviewed, and which were cited by the court to sustain the doctrine announced in the Kay county case.

We beg a careful comparison of the complaints in the two cases, and we venture marked differences will be discovered in them, so much so that it can not be denied that the Indians are so directly and intimately interested, and that their personal and property rights are so affected by the terms of their contract with the appellants (Wagoner and others) herein that a tax imposed on the stock of these appellants, herded and grazed on the

reservation of these Indians, and under lease from them will impair personal privileges and benefits vouchsafed to them thereunder, as well as deprive them of a large amount of the value of the use of the lands so leased.

To that end, take a cursory view only of a portion of the allegations in this complaint, and which are unequivocally admitted in the statement of facts on which the same was tried, and in view of these allegations and admissions, then let it be said, if it can be, that a tax imposed on the property of these appellants will in no manner impair any of the uses made of this reservation by these Indians or make the use thereof by them less absolute and less profitable.

It is most distinctly averred in this complaint, and admitted to be true, that these appellants have given a larger amount for the use of these lands than similar lands of equal value can be had in close proximity in the State of Texas.

That they have been induced, and it has been a consideration to them in this case, that they were exempt from all tax. They have been using and leasing these lands for a period of ten years, and under the sanction of the Government, and long before any act of Congress was passed authorizing such leases.

That it has been a condition precedent made in their contracts, they should employ a number of the Indian men in this reservation in herding and managing their stock; that they have paid, and still pay, them such wages as the most efficient employés in this line are paid; that in the inception of this work these Indians so employed were comparatively inefficient; that they have grown in this employment proficient, and many are now able to earn full compensation in competitive fields; that the purpose of securing this employment of these Indians by the United States authorities was, as fa

as possible, to break up their tribal relations, and, by contract and association and the necessary training incident to this service, they would thereby learn and desire to abandon their tribal methods and assume and adopt the civilized and civilizing habits of the white man.

That, if this tax is permitted to be imposed on them, they will either cancel their leases or so reduce the prices already paid and now being paid, as to diminish it to the extent at least that the tax in question amounts to which is imposed on them.

So then we confidently insist upon the undisputed facts, where there can be no question, that the absolute and undisturbed use and occupation of this reservation vouchsafed to these Indians will be impaired and rendered less absolute and less valuable to them, if the stock of these appellants is permitted to be taxed under this law which is sought to be enforced in Oklahoma.

And again we refer to the *Worcester-Georgia* case as sustaining us in full, where it was so clearly held a law of Georgia imposing a license upon individuals in the Cherokee Reservation was invalid.

Respectfully submitted.

A. H. GARLAND and
R. C. GARLAND,
Attorneys for Wagoner and others.

No. 252 and 262.

Brief of Beall for Evans et al
Filed April 14, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1897.

WAGONER AND OTHERS *vs.* NEIL W. EVANS AND OTHERS.	No. 252.

NEIL W. EVANS AND OTHERS *vs.* WAGONER AND OTHERS.	No. 262.

Appeals from Supreme Court of Oklahoma Territory.

Brief for Neil W. Evans and Others.

FRED BEALL,
AMOS GREEN,
C. M. GREEN,
Attorneys for Neil W. Evans et al.

Saxton Printing Co.,
619 E Street N. W.

. . . IN THE . . .

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NEIL W. EVANS AND OTHERS
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WAGONER AND OTHERS. } No. 262.

Brief for Neil W. Evans and Others.

STATEMENT.

These are cross appeals from the Supreme Court of Oklahoma Territory. The appellants are residents of the State of Texas and have, for many years, kept and grazed large herds of cattle and horses on the Kiowa and Comanche Indian reservation, which is a part of the Territory of Oklahoma, but not embraced in any organized county of that Territory; said

reservation was, however, May 9, 1890, under the authority of Section 9, of the Act of Congress of May 2, 1890 (26 Stats., 86), attached to Canadian county for judicial purposes, and has so continued hitherto. (Rec., p. 14.)

Appellants have paid no taxes on their property kept on said reservation for either of the years 1892, 1893, 1894, or 1895.

In January, 1893, the county commissioners of Canadian county appointed a special assessor to assess all property in the unorganized country attached to that county, who, in the discharge of his duties as such assessor, did, during the year 1893, list the property of appellants on the Kiowa and Comanche reservation, and valued and assessed the same, and returned the list thereof, with his valuation, to the clerk of Canadian county, as an assessment of said property for the year 1893. (Rec., p. 15.)

The special assessor for Canadian county also listed and valued the property of appellants for taxation for the year 1894, and it is admitted that the "county clerk did, on the 3d day of October, 1895, value and assess and list the personal property of the plaintiffs for the year 1894, and placed and extended said re-assessments on the tax-rolls of Canadian county, and certified same to the county treasurer of said county, claiming to act in pursuance of Sec. 14, Art. 3, Chap. 22, page 398, Oklahoma Statutes; that the valuation and property so listed, valued, and assessed by the clerk was the same property and valuation as fixed by the special assessor under the act of the Territorial legislature, purporting to have been approved the 5th day of March, 1895, entitled 'An Act to amend Section 13, Article 2, Chapter 70, of Oklahoma Statutes, relating to revenue,' and while it is a fact that the same property was thus assessed and valued at the same price and value by said officers, only one tax is sought to be collected.

"That the county clerk made said list from the return made by the special assessors appointed by the board of county commissioners, and based the valuation made by him on the valuation made by the said assessors, he then claiming the lists and valuations so made to be satisfactory evidence of the value of the property so listed, and said clerk made no effort to ascertain

the value of said property in any other manner, said cattle being then in said reservation." (Rec., p. 14.)

The Act of March 5, 1895, is as follows:

That Section 13, Article 2, Chapter 70, of the Oklahoma Statutes relating to revenue, be and the same is hereby amended so as to read as follows: Section 13. That when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this territory, then such property shall be subject to taxation in the organized county to which said country, district or reservation, is attached for judicial purposes, and the board of county commissioners of the organized county, or counties to which such unorganized country, district, or reservation is attached, shall appoint a special assessor for each year, whose duty it shall be to assess such property thus situated or kept; such special assessor shall have all the powers and be required to perform all the duties of a township assessor, and shall give a similar bond and take the same oath as required of such township assessor, and receive the same fees as a township assessor, and the officer whose duty it shall be to collect the taxes in the organized county to which such country, district, or reservation is attached, shall collect the taxes and is vested with all the powers which he may exercise in the organized county, and his official bond shall cover such taxes. The assessor herein provided for shall begin and perform his duties between the first day of April and the twenty-fifth day of May, of each year, and complete his duties and return his tax lists on or before June first, and said property, herein authorized to be assessed, shall be valued as of May first in each year. *That in case said property at any time has by oversight or negligence, or for any other cause, been irregularly, illegally, or defectively assessed, it shall be lawful for the special assessor to assess or re-assess the same as the case may be, and when done the same shall be valid for all intents and purposes, and in performing his duties under this section he may make out his assessment rolls or lists from the best evidence attainable.* Any person who feels aggrieved by his assessment in any such country, district or reservation, may appear before the board of county commissioners for the organized county to which such country, district or reservation is attached for judicial purposes, at their session commencing on the first Monday in June, and the board of county commissioners shall have power to correct any and all errors and equalize individual assessments: Provided, That the assessed valuation of such attached terri-

tory shall in no case be taken as a basis for the creation of a bonded indebtedness of the county to which it is attached, or in estimating or limiting the same."

The appellants having failed to pay any taxes on their property on said reservation for any year from 1892 to 1895, inclusive, the proper officers of Canadian county were about to proceed to collect the taxes due by the appellants, under the levies made by the territorial and county authorities respectively for each of the years 1892, 1893, 1894, and 1895, the said taxes being based upon the assessments made of their property by the special assessor and county clerk, when on November 18, 1895, the appellants, Wagoner *et al.*, began an injunction suit against the county treasurer, sheriff and board of county commissioners of Canadian county, to restrain the collection of said taxes, alleging in their petition that they had for many years occupied certain parts of said Indian reservations under leases with the Indians, which had been approved by the proper officers of the United States; that Neil W. Evans, as treasurer of Canadian county had levied a tax upon all the cattle and horses of plaintiffs on said reservation, not only for 1895, but also for the years of 1892, 1893, and 1894, and had issued writs to the sheriff of said county authorizing and directing him to seize said cattle and horses and sell them to satisfy said demands for taxes for said years. The taxes, the collection of which was sought to be enjoined, were for county and territorial purposes, and it is alleged by plaintiffs that no part of said taxes were intended to be appropriated or used within said reservation. A schedule of the taxes for each year was filed with the petition, showing the kind and amount of taxes for each year (Rec., p. 12). The plaintiffs attacked the validity of the act of the territorial legislature of 1895, and alleged that there was no authority in law for the levy or collection of said taxes; they claimed that the laws of Oklahoma, imposing taxes upon their property, kept in the said reservation, infringed upon the treaty rights of the Indian tribes, in that if plaintiffs and others similarly situated were forced to pay taxes on their herds and ranche properties, kept on said reservation, that it would re-

sult in diminishing the rentals paid the Indians for the use of their lands for grazing purposes.

To the petition, the officers of Canadian county, the cross appellants here, interposed a general demurrer, which being overruled (Rec., p. 13), they answered by an agreed statement of the facts (Rec., pp. 13–16.)

The cause was submitted for hearing on the agreed statement of facts (Rec., p. 14), whereupon the district court entered the following decree:

"That the defendants and each of them are fully authorized by the laws of Oklahoma Territory to collect from the petitioners and each of them, the taxes for territorial and judicial purposes for the year 1895, only, and that the defendants and each of them are without authority to collect from the petitioners and each of them the taxes for county, township, or other than the territorial and judicial purposes as aforesaid.

"It is, therefore, considered and decreed by the court, that the defendants and each of them are authorized and permitted to collect those parts of the tax which are for territorial and judicial purposes for the year 1895, only, and are not authorized or permitted, and are hereby enjoined and ordered, not to collect any part of the taxes which are for county, township, or other than the territorial or judicial purposes as aforesaid, and no taxes whatever for the years 1892, 1893 and 1894; to which order and decree the petitioners and defendants, each and severally, object and except; which exceptions are allowed." (Rec., p. 16.)

From that decree both parties appealed to the Supreme Court of Oklahoma, which court, on September 4, 1896, affirmed the decision of the district court as follows:

"This case is, in the view we take of it, identical with the case of *Gay and Reed* v. *The County Commissioners of Kay County, et al.*, decided at this term of court, and the judgment of the trial court in this case is the same as that of the trial court in the case we have just decided, and without elaboration upon the questions presented, judgment of the court below is affirmed." (Rec., p. 40.)

From the decision of the Supreme Court of Oklahoma, the case is brought to this court by the appeal of Wagoner and others, and the cross appeal of Evans and others, the county officers, who were restrained from collecting said taxes.

The appellants, Wagoner *et al.*, have assigned the following errors:

First. The court below erred in not reversing that part of the judgment of the district court within and for Canadian county, Oklahoma Territory, which held and adjudged that these appellants, or either of them, are liable to any part of the tax complained of in the complaint before said court, set out in this record.

Second. The Supreme Court of Oklahoma Territory erred in holding that the appellants were liable for the taxes levied for territorial and judicial purposes for the year 1895.

Third. Said court erred in holding that the statute of Oklahoma, under which said taxes were levied, was not invalid for want of uniformity.

Fourth. The court erred in holding that the cattle of the appellants, held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation under the statute of the Territory of Oklahoma.

Fifth. Said court erred in holding that the cattle of these appellants, held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation for the judicial expenses of Canadian county.

Sixth. Said court erred in holding that the cattle of these appellants, held by them in the Comanche reservation under lease from the Comanche tribe of Indians, under the treaties and laws of the United States, were liable to taxation for the territorial expenses of Oklahoma Territory.

Seventh. Said court erred in holding that while the general taxing statute of the Territory made cattle taxable on the first day of February, the statute of 1895 could lawfully make the cattle in the reservation attached for judicial purposes to Canadian county taxable on the first day of May.

Eighth. Said court erred in holding that while the general taxing statute of the Territory made cattle in the Territory, generally, taxable on the first day of February, a statute mak-

ing cattle in part of the Territory taxable on the first day of May was not special legislation and invalid.

Ninth. Said court erred in holding that a tax such as that in question, which would as averred in the complaint and admitted by the answer, largely decrease, if not destroy, the rentals, employment, and education as herdsmen which the Indians could and do get under said leases of their tribal lands, would not injuriously damage or infringe upon the rights of the Indians, under the treaties and laws of the United States, to the lands of the said reservation set apart to their absolute and undisturbed use and occupation, and did not disturb such use or occupation or make the same less absolute.

Tenth. Said court erred in holding that the true coustruction of the treaties under which the Kiowa and Comanche tribes of Indians used and occupied said reservation did not protect from taxation by Canadian county and Oklahoma Territory the cattle held in said reservation by said Indians or under pasturage contracts with said Indians. (Rec., pp. 47–48.)

The cross appellants have assigned the following errors:

First. The court below erred in affirming the judgment of the district court of Canadian county, Oklahoma Territory, which judgment overruled appellants' (on cross-appeal) demurrer to appellees' petition.

Second. Said court erred in failing to dissolve the injunction granted by the district court.

Third. Said court erred in rendering judgment only for the territorial tax of 1895 and the county tax for judicial purposes for the year 1895.

Fourth. The court erred in failing to decide and hold appellees liable for territorial taxes and all the county taxes assessed and levied for the years 1892, 1893, 1894 and 1895.

Fifth. The court erred in sustaining appellee's order of injunction to any extent.

Sixth. The court erred in not dissolving appellees' injunction as the whole tax enjoined by them. (Rec., p. 49.)

ARGUMENT.

I

We submit that the petition is obnoxious to the general demurrer interposed by the defendants, and that the action of the Supreme Court of Oklahoma in affirming the district court, wherein it overruled the demurrer, was error.

The petition in effect admits:

1. That the petitioners had in the unorganized country attached to Canadian county for judicial purposes, during the years 1892, 1893, 1894 and 1895, the property against which the alleged taxes had been levied for those years respectively.

2. That there was no illegality in the *levy* by the territorial and county authorities respectively, of the taxes for either of the years 1892, 1893, 1894 or 1895, but that the *levies* for each of said years were regular and valid.

3. That said property had not been overvalued for any of said years.

4. That no taxes had been paid by them or anyone else on any of said property for any of said years.

There is no denial in said petition.

1. That the property of the petitioners had been fairly listed for taxation, and correctly valued for each and every of said years.

2. That the taxes for each of said years had been legally *levied* by the duly constituted authorites of Oklahoma, and of the county of Canadian.

It is true, that there is the following allegation in said petition:

"But these plaintiffs would respectfully show that during the present year the defendant, Neil W. Evans, as treasurer of said Canadian county, has *levied* a tax upon all the cattle and horses of these plaintiffs in the Kiowa and Comanche reservation, not only for the present year, 1895, but has likewise *levied* a tax upon all of said property during the present year for the past years of 1892, 1893, 1894, and has issued writs to his co-de-

fendant, J. M. Cannon, as sheriff of said county, under such *levy* and thereby directing and requiring said sheriff to serve such writs and take possession of said cattle and sell the same, and therefrom to satisfy said writs, and said sheriff is now threatening to execute said writs by seizing said cattle and horses." (Rec. p. 6-7.)

From a subsequent statement in the petition on page 9 of the record, however, it is quite evident that the petitioners did not intend by the above quoted allegation to charge that the county treasurer had actually *levied* the taxes, but we take it, that the intention was to charge that the county treasurer was proceeding to *collect* the taxes.

The words "levy" and "assess" are seemingly used by the pleader interchangeably, and as of the same meaning.

See following statements on page 7 of record:

"That the *assessment* of these properties for taxes for the years 1892, 1893, and 1894 include an *assessment* for the territorial fund, county general fund, county road and bridge fund, county sinking fund, county separate school fund, and county fund.

"That the taxes *levied* for 1895 are for the territorial fund, county school fund, separate school fund, sinking fund, contingent fund, county expense fund, county supply fund, road and bridge fund, poor and insane fund, and salary fund."

See also the following on page 9 of record:

"These plaintiffs would further show that these defendants and each of them claim that said treasurer and said sheriff in their proceedings in this behalf are acting under an Act of the Legislature of Oklahoma, purporting to be an Act to amend Section 13 of Art. 2, Chapter 70, of the Oklahoma Statutes concerning revenue, and approved by the governor of said Territory, on the 5th day of March 1895."

We suppose that the petitioners intended by the language employed, to charge that the county treasurer was in the act of doing those things which he is directed to do by Sections 5632, 5641, and 5642 of Statutes of Oklahoma, 1893, which are as follows:

5632. The county treasurer of each county shall attend at the county seat at all times to receive the taxes not yet paid, and he is also authorized and required to collect, so far as

practicable, the taxes remaining unpaid on the list of the former year or years. In all cases where taxes are paid he shall give a receipt to the person paying the same.

5641. If on the assessment roll or tax list, there be any error in the name of the person assessed or taxed, the name may be changed and the tax collected from the person intended, if he is taxable, and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who upon being satisfied thereof, shall enter the same upon his assessment roll and assess the value, and the treasurer shall enter it upon the tax list and collect the tax as in other cases.

5642. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law to attend the treasurer's office at the county seat and pay his taxes; and if any person neglect so to attend and pay his taxes until after the first Monday in April next succeeding the levying of the taxes, the treasurer is directed and required to collect the same by distress and sale, and he may deputize some suitable person so to do.

The territorial board of equalization *levies* the territorial tax (Sec. 5624, Statutes of Oklahoma, 1893), and the board of county commissioners *levies* the county taxes (Sec. 5627, Statutes of Oklahoma, 1893.)

As stated above there is no denial in the petition that the territorial and county taxes were regularly and legally levied for each of the years, for which the taxes were sought to be collected of the petitioners. They file with their petition a schedule of the taxes levied for each of those years. (Rec. p. 12).

The petition alleges "that the action of said county treasurer and said sheriff in levying and seeking to collect said taxes is without warrant of law, and in violation of the rights of these plaintiffs," but there is no statement of any fact that supports that averment—it is a mere bald allegation of a legal conclusion, supported by no proper or sufficient statement of any facts, and hence cannot be considered.

The whole gist of the complaint by the petitioners, is that their property is not liable to taxation because it is situated on

an Indian reservation, and that the Statutes of Oklahoma providing for the taxing of property situated as they admit theirs is and was, is invalid, and of no effect.

The question has been fully settled by this court in the recent decision in the case of *Gay et al.* v. *Thomas et al.*, which came up from Kay County, Oklahoma, decided Feb. 21, 1898.

The Statutes of Oklahoma providing for the assessment, levy and collection of taxes on property situated in unorganized country attached to organized counties in the Territory, having been by this court declared valid, every allegation in the petition of appellants charging the invalidity of those statutes must go for naught, and when they are eliminated from the petition there is no allegation remaining, sufficient in law to justify the granting of the relief prayed for, or any relief. Hence we say that the demurrer to the petition should have been sustained, and the petition dismissed.

The sole ground for an injunction under the Statute of Oklahoma, to restrain the collection of taxes, is that the *tax is illegal*. There is no statutory authority to enjoin a tax, upon grounds of irregularity in the listing, assessment, or even the levy unless it shall be such as to render the tax illegal. Section 4143, Okla. Stats., is as follows:

> An injunction may be granted to enjoin the illegal levy of any tax, charge or assessment, or the collection of any illegal tax, charge or assessment, or any proceeding to enforce the same.

The law of Oklahoma prescribing the rate of taxation and mode of levy of taxes for the years 1892 to 1895, inclusive, is embraced under Article 8, of Chapter 75, of Statutes 1890, pages 1079–1081, and Article 8, of Chapter 70, of Statutes 1893, pages 1046–1047, the articles in the two statutes being substantially the same in all of their requirements, and both conclude with this provision:

> "And no informality in the foregoing requirements shall render any proceedings for the collection of taxes illegal."

No informality in the levy of the taxes for any one or more of the years named, is alleged in the petition, nor is there

anything anywhere in the record that tends in the slightest degree to show any irregularity or informality whatever in the levy of taxes for any of those years, and since the petition contains no allegation that there was an "illegal levy of any tax" sought to be collected, we insist that the allegations in the petition do not bring the case within the statute, which provides that "An injunction may be granted to enjoin the illegal levy of any tax, charge or assessment, or the collection of any illegal tax, charge or assessment, or any proceeding to enforce the same." The statute does not say that an injunction may be granted to enjoin an illegal assessment, or any proceeding to enforce an illegal assessment, but it is an illegal *levy* of any tax, or an illegal *levy* of an assessment, or any proceeding to enforce an illegal *levy* of any tax," the expression an illegal levy of an assessment is evidently employed as another form of expression for an illegal levy of a tax.

Mr. Cooley says:

"When taxes are to be apportioned among the taxables in proportion to the value of property, or according to special benefits, or upon the results of business, it becomes requisite that an official estimate should be made for that purpose. This estimate, when made under state laws, is commonly called an assessment, and the completed document is given the name tax list or assessment roll, or something equally significant and indicative of its nature. Under state laws, generally, *levies* are most commonly made *upon an assessment* by the value of property.

An assessment, strictly speaking, is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district. *It does not, therefore, of itself lay the charge* upon either person or property, but it is a *step preliminary thereto*, and which is essential to the apportionment. As the word is more commonly employed, assessment consists in the two processes of *listing* the persons, property, etc., to be taxed, and of *estimating* the sums which are to be the guide in an apportionment of the tax between them." (Cooley on Taxation, 2d ed., 351.)

The same author, on page 324, defines the term "levy" as follows:

"The power to tax being legislative, there must be distinct

authority of law for every levy upon the people under that power. The authority may come from the constitution, which, in exceptional cases, will provide for the levy of a specific tax, or for a tax for some defined purpose; but in general the authority will come from the legislature, and must be expressed in statutory form. * * * And in the case of local taxation there must commonly be two distinct acts of legislation: First, that by the state giving the power to tax; and Second, that by the local legislative, or *quasi* legislative authority, laying the tax under the power so given."

While the distinction between the terms "assessment" and "levy" is clearly marked in the Oklahoma revenue statute, yet it was probably deemed prudent by the legislature to extend the right of injunction so as to cover any illegal levy of taxes, by whatever name such levy might be called.

The chapter on revenue (70) in the Oklahoma statutes (1893) is divided into 11 articles.

Article 1, declares that "all property, whether real or personal, * * * shall be subject to taxation," except certain specified classes, such as property of the United States, etc.

Article 2, prescribes the "manner of listing property" subject to taxation.

Article 5, provides for the making of an assessment roll by the county or township assessors which shall embrace "a list of all taxable lands in such county," and "a list in alphabetical order of all persons and bodies corporate in whose names any property, or anything taxable, other than real estate, *has been listed*."

The concluding provision of said Article 5, is as follows:

"Provided, That if any party from any good cause, without fault on his or her part, fails to list to the assessor at the *time of the assessment* any property which such party should have listed, or fails to list the same as fully as it should have been done, such party *shall furnish such list, or corrected list to the board of equalization* on or before the first day of the meeting thereof."

Note that this section 2, of Article 5, defines the term "assessment" to be the listing of the property by the assssor; also note that the failure of the assessor to list or assess the property of any party liable to have his property listed for taxa-

tion, did not absolve him from taxation, but it was expressly declared that such party should "furnish such list to the proper board of equalization on or before the first day of the meeting thereof." The times of such meetings as we will see by the succeeding Article, 6, was fixed by law, and of course all owners of property taxable under the law, are charged with notice not only of their duty to report their property for assessment, but also of the time at which, and the authorities to whom, they they should make such reports.

Article 6, provides for county and township boards of equalization. The township board is required to meet on the third Monday of April of each year to hear all complaints of persons who feel themselves aggrieved by their assessments, "and the decisions of said boards shall be final as to individual assessments."

The county commissioners shall meet "on the first Monday of June in each year for the purpose of equalizing the assessment roll in their county, between the different townships, and after the assessments have been thus equalized the county clerk is required to make out an abstract of all the property of the county and transmit the same to the Auditor of the Territory." The last clause in that Article 6 provides that "the county commissioners are authorized to direct the Clerk to add to the above list of items such other items as they may deem advisable."

Article 7, provides for a territorial board of equalization.

Article 8, has reference to the "Rate of Taxation and Levy." Section 3 of that article declares that "on the third Monday of July of each year the board of county commissioners must meet in the county seat to *levy* the necessary taxes for the current fiscal year," etc.

Note that no informality in the listing, assessing or levying "shall render any proceedings for the collection of taxes illegal." (Sec. 7 Article 8, page 1047, Stats. 1803.)

Article 9, defines the duties of the county treasurer as collector of taxes.

"Sec. 1. The county treasurer of each county shall attend at the county seat *at all times* to receive the taxes not yet paid, and *he is also authorized* and *required to collect so far*

as practicable, the taxes remaining unpaid on the list of the former year or years."

Note the authority to collect taxes dues for former *years* without any limit to the number of years back.

Section 10, provides that "when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who upon being satisfied thereof, shall enter the same upon the assessment roll, and assess the value and the treasurer shall enter it upon the tax list, and collect the tax as in other cases."

In these two sections of Article 8, namely Sections 1 and 10, there is ample authority for the listing and assessing of property for former years, as well as for collecting the back taxes, all of which of course, is done under the levy made for each of the former years; see also in this connection section 1675, page 389, of Stats. 1893, which is as follows:

"It shall be the duty of the county clerk to assess at a fair value the property of any person or corporation liable to pay taxes which the township assessor has failed to assess, and place the same on the tax roll, and the county treasurer shall collect the taxes on the same as in other cases, and it shall further be the duty of the county treasurer to notify the county clerk of any such property which may come to his knowldege, and the county clerk for the purpose of assessing the same, is authorized to administer oath to the owner of such property, or to any other person, touching the value of the same, but the county clerk is not required to see such property in person."

Article 10, is in reference to delinquent taxes, and among other things contains the following.

"Sec. 2. Taxes due from any person upon personal property, and unpaid *for the two years last past* shall be a lien on any real property owned by such persons in the connty where the land is located, or in a county to which unpaid taxes have been certified before the holder of the land has sold the same."

Sec. 3 provides that the treasurer shall issue warrants to the sheriff for the collection of delinquent taxes, and section 4, directs that the sheriff shall note all removals to other counties of persons delinquent.

By Sec. 5 of Article 10, it is enacted that "county treasurers shall at any time after first warrants have been returned, issue alias warrants to the sheriff, or any constable of his county, for any personal taxes, ***which are now*** or may hereafter remain due for ***any year or years***, which shall be collected as provided in sections three and four of this article."

From the foregoing it will be seen that prior to the Act of March 5, 1895, Oklahoma had a complete system of taxation, authorizing the collection of taxes for former years as well as for those current, and that Section 13, of Article 2, Chapter 70, of 1893 Statutes, which is the same as Section 14, of Article 2, Chapter 75, of 1890 Statutes, made the property of Wagoner ***et al.***, situated and kept in the unorganized country attached to Canadian county subject to taxation, and liable to the county and Oklahoma Territory for the taxes levied for the years 1892 to 1885 inclusive, and that the proceedings about to be had by the proper authorities of the county for collection of the taxes from appellants for said years, when said injunction suit was begun, were fully authorized by the Statute and in every respect legal, and should not have been enjoined.

As the taxes were levied by the territorial and county authorities for each year, they become a valid, legal, continuing charge upon all the taxable property of appellants on the Indian reservation, at the rate of taxation affixed by the proper authorities of Canadian county, for each year, regardless of whether their property had been listed, valued, or assessed. A levy for each year was sufficient to fix the liability of plaintiffs. They could escape the payment of the taxes levied, neither by the fault, negligence, or ignorance of the assessor, nor by their own, for as hereinbefore stated, they were required by Section 2, of Article 5, of Chapter 70, of 1893 Statutes, to to report their property to the equalization board for listing and assessment, if the assessor failed to list or assess their property; and if they failed to report their property to the board as required by the statute to do, then full authority was bestowed upon "the county clerk to assess at a fair value the property * * * liable to pay taxes, which the township assessor had failed to assess, and place the

same on the tax roll," etc. Section 1675, apge 389, of 1893 Statutes.

ACT OF 1895.

The authority to collect the taxes enjoined, was complete before the Act of March 5, 1895, but with that act every possible doubt is removed. That act provides, in reference to cattle kept or grazed, or any other personal property situated in any unorganized country:

"That in case said property *at any time* has by oversight or negligence or *for any other cause been irregularly, illegally, or defectively* assessed, it shall be lawful for the special assessor to assess, or re-assess the same as the case may be, and when done the same *shall be valid for all intents and purposes*, and in performing his duties under this section, he may make out his assessment rolls or lists from the *best evidence attainable*. Any person who feels aggrieved by his assessment in any such country, district or reservation, may appear before the board of county commissioners for the organized county, to which such country, district, or reservation is attached for judicial purposes, at their session commencing on the first Monday in June, and the board of county commissioners shall have power to correct any and all errors and equalize individual assessments."

There is nothing in appellants' petition to show that their property had not been regularly, legally, and effectively assessed for each year, from 1892 to 1895, inclusive, nor is there any complaint made against the valuation of their property for any of said years, but the sole complaint is that the county treasurer was threatening to collect taxes of them for each of said years.

It is, however, contended that the Act of 1895 gave no authority for taxing property prior to the date of its passage, and there could be no ground for taxing the property for the years 1892, 1893 and 1894.

The Act of 1895 being an amendatory statute, places the amended section as part of the general tax law, and it is to be construed accordingly. *Winona & St. Peter Land Co.* v. *Minnesota*, 159, U. S., 526. And being intended to cure a

supposed defect in the then existing laws, it should be liberally construed. *Auditor General* v. *Jenkinson*, 90 Mich. 523.

The "Hewitt Bill" of Kentucky, provides that: "It shall be the duty of the sheriff to report to the county clerk all lists or parts of lists of property which may for any year or years, have been omitted by the assessor, and all property which corporations may have omitted for any year or years to have listed with the auditor, and said clerk shall enter the same on the assessor's book for his county, and certify the same to the auditor on or before the last day of January of each year."

The Supreme Court of Kentucky, in *Louisville Water Co.* v. *Commonwealth et al.*, 34, S. W., 1064, held the law not only prospective, but also retrospective, and valid.

That retrospective revenue laws are valid, has been too often declared by this court, and others of last resort, as also asserted by elementary law writers, to be now an open question. Such laws are found upon the statutes of nearly every state and territory of this country. Discussions of the subject are found in all works on taxation, notably Cooley, pages 301 *et seq*.

Revenue laws are to be regarded as remedial, rather than penal, and they are required to be liberally construed so as to carry out the intentions of the legislatures, and the purpose of their enactment.

Cliquot's Champagne, 3 Wall., 145.
United States *v.* Hodson, 10 Wall., 395.
Winona & St. Peter Land Co. *v.* Minnesota, 159 U. S., 526.
Wright *v.* Stinson, 47 Pac. Rpt., 761 (Washington.)
Shattuck *et al v.* Smith *et al*, 69 N. W. Rpt., 5 (N. D.)

The whole scheme of the Oklahoma revenue laws seems to be such as this court declared in reference to that of Arizona in *Maish* v. *Arizona* 164 U. S., 599, wherein was said on page 607, "Evidently it was the intention of the legislature, and *a just intention*, that no property should escape its proper share of the burden of taxation by means of any defect in the tax proceedings, and that if there should happen to be such defect preventing for the time being the collection of the taxes, steps might be taken in a subsequent year to place them again on the tax roll and collect them."

It cannot be justly said that any injury was about to be inflicted on the substantial rights of appellants when they brought their injunction suit; they had then escaped the pay-

ment of all taxes for four years, during all of which time they had had the benefits of that protection to their lives and their liberties and their property which the laws of Oklahoma secured to all within her boundaries, and even if it should appear, that there had been some irregularities in the proceedings to collect the taxes due from the appellants, yet a court of equity will not lend its aid by injunction to restrain the collection of taxes because of mere irregularities in the tax proceedings, and which do not injure the substantial rights of the tax payer.

Railway Co. *v.* Russell, 8 Kans., 558.
Challess *v.* County Commissioners, 15 Kans., 49.

When one comes into a court of equity to restrain the collection of taxes, courts act upon the wholesome maxim "He who asks equity must do equity," and as a condition precedent to relief, require that he shall first have complied with all just and equitable requirements of the law.

Turner *v.* Hutchinson (Mich), 71 N. W. 5.
Commissioners *v.* City of Detroit, 41 Mich., 128.

The parties here now asking equity do not come with clean hands, but rather with their hands raised against the law; they deny the right of Oklahoma to tax their property within her borders. In effect they confess that they did not, as required by section 5619 of the Oklahoma Statutes, furnish a list of their property liable to taxation to the board of equalization, nor did they ever offer to pay any taxes for any year.

We insist that the allegations of the petition are not sufficient to bring the case within the statute of Oklahoma authorizing an injunction to restrain an illegal levy of a tax, and certainly the petition cannot be sustained upon the principles of general equity powers.

The subject matter of the taxes, the collection of which was enjoined, is personal property, alone, and the remedy at law is adequate and complete.

Dows *v.* Chicago, 11 Wall., 108.
Hannewinkle *v.* Georgetown, 15 Wall., 547.
Mo. River &c. R. R. Co. *v.* Wheaton, 7 Kans., 232.
Dodd *v.* Hartford, 25 Conn., 232.
Cooley on Taxation (2nd Ed.), 772-778, and authorities cited.

II.

THE MERITS ON THE PETITION AND ANSWER.

The third and fourth errors assigned by the cross-appellants are:

"Third. The court erred in rendering judgment only for the territorial tax of 1895, and the county tax for judicial purposes for the year 1895.

"Fourth. The court erred in failing to decide and hold appellees liable for territorial taxes, and all county taxes assessed and levied for the years 1892, 1893, 1894 and 1895."

As said above, there is no averment in the petition that the property of appellants was not regularly and duly listed, valued and assessed for each year from 1892 to 1895, but the following admissions in the agreed statement of facts upon which the final hearing was had, show affirmatively that their property was assessed for 1893, 1894 and 1895.

"It is agreed that on the 31st day of January 1893, the board of commissioners of Canadian county, in said territory, made an order and entered it upon its records as follows, towit:

"Board appointed John J. Jennings special assessor for that part of Oklahoma Territory attached to Canadian county for judicial purposes," and the said John J. Jennings gave bond for the faithful performance of his duties, which bond was approved by said board on the 2d day of February, 1893, but said Jennings did not take an oath of office as such assessor.

"That said special assessor, during said year, made out a list of the property on said reservation belonging to plaintiffs, and valued and assessed the same under said order of appointment, which property consisted of said cattle, and returned such list to the clerk of said county as an assessment of said property for the year 1893.

"And the collection of the taxes against plaintiffs as based on the said valuation and return was enjoined by this court at the suit of plaintiffs, as an illegal levy and assessment.

"It is admitted that the Canadian county clerk did, on the third day of October, 1895, value and assess and list the personal property of the plaintiffs for the year 1894, and placed

and extended said re-assessments on the tax-rolls of Canadian county and certified same to the county treasurer of said county, claiming to act in pursuance of sec. 14, art. 3, chap. 22, page 398, Oklahoma Statutes; that the valuation and property so listed, valued, and assessed by the clerk was the same property so listed, valued and assessed by the assessor under the act of the territorial legislature, purporting to have been approved the 5th day of March, 1895, entitled, 'An act to amend Section 13, Article—, Chapter 70, of Oklahoma Statutes, relating to revenue,' and while it is a fact that the same property was thus assessed and valued at the same price and value by said officers, only one tax is sought to be collected.

The county clerk made said list from the return made by the special assessors appointed by the board of county commissioners, and based the valuation made by him on the valuation made by the said assessors, he then claiming the lists and valuations so made to be satisfactory evidence of the value of said property so listed, and said clerk made no effort to ascertain the value of said property in any other manner, said cattle being then in said reservation."

There is no denial in the petition, or any question raised anywhere in the record, of the levy of the taxes for each year; it must therefore be assumed that the levy for each year was regular and in all respects legal, and we may grant for the sake of argument, that there was no assessment of appellants' property for 1892, but as it was by statute made their duty to report their property to the equalization board for assessment, their failure to do so was their own wrong, of which they will not be permitted to take advantage, they are, therefore, estopped from saying that there was no assessment of their property for 1892, or for any other year. Neither the failure of the assessor to assess the property, or of the owner to report it to the equalization board for assessment will defeat the collection, for as shown above, both these contingencies are fully provided against by the statutes of 1890 and 1893, to say nothing of the curative act of 1895, the intent of which was manifestly to remove all possible doubts as to the right to collect the very taxes in question. The intent of the legislature cannot be doubted; it was to provide an ample cure for all possible defects in the revenue law then in force in Oklahoma, so that "any cattle kept or grazed, or any other personal property situated

in any unorganized country, district or reservation of the territory, which at any time *had* by oversight or negligence, or for any other cause *been* irregularly, illegally, or defectively assessed," should not thereby escape its just burden of taxation, but that it should "be lawful for the special assessor to *assess* or *re-assess*" all such property and "and when done" such an assessment should "be valid, *for all intents and purposes.*"

A broader statute could not have been enacted; it meets every condition and phase of this case, so perfectly that it leaves no room for argument.

Mr. Cooley says on page 307:

"The method of curing defects by reassessment of the tax is less open to abuse than any that has been hitherto mentioned. Whether this be done by general law which shall provide for all cases in which tax proceedings prove invalid, and authorize the same tax to be imposed on the persons or property that ought to be charged therewith, by proceedings begun *de novo*, or on the other hand, shall assume the form of a special law, providing for the like reassessment in *any* particular case, it is scarcely possible that it should cause serious injustice beyond what is incident to all tax legislation. In the new proceedings, the party concerned will have an opportunity to watch the various steps and be heard in the review of them.

"The reassessment will be for the purpose of merely enforcing against him a duty which he was likely to evade. If the tax was originally void by reason of having been levied for an illegal purpose, it is obviously impossible to breathe vitality into it by new proceedings. *If it was void because of want of legislation justifying it, it may be reassessed after proper legislation.*"

Respectfully submitted,

FRED BEALL,

AMOS GREEN,

C. M. GREEN,

Attorneys for Neil W. Evans, et al.

WAGONER *v.* EVANS.

EVANS *v.* WAGONER.

APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

Nos. 252, 262. Submitted April 29, 1898. — Decided May 23, 1898.

Thomas v. *Gay*, 169 U. S. 264, affirmed and followed to the point that "the act of the legislative assembly of the Territory of Oklahoma of March 5, 1895, which provided that 'when any cattle are kept or grazed or any other personal property is situated in any unorganized country, district or reservation of this Territory, such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes,' was a legitimate exercise of the Territory's power of taxation, and when enforced in the taxation of cattle belonging to persons not resident in the Territory grazing upon Indian reservations therein, does not violate the Constitution of the United States."

Prior to the passage of that act there existed no power in the authorities of Canadian County to tax property within the attached reservation; and, as such authority was first given by that act, it could only be validly exercised on property subjected to its terms after its enactment.

Taxes, otherwise lawful, are not invalidated by the fact that the resulting benefits are unequally shared.

In November, 1895, D. Wagoner, W. T. Wagoner and S. B. Burnett filed in the district court of Canadian County, Territory of Oklahoma, a petition against Neil W. Evans, as treasurer, and I. M. Cannon, as sheriff, and Osborn, Hutchinson and Vasey, as county commissioners of Canadian County, asking to enjoin the said defendants from levying or collecting certain taxes upon herds of cattle and horses belonging to the complainants, and by them kept and grazed on the Kiowa and Comanche Indian reservation which is a part of the Territory of Oklahoma, but not embraced in any organized county of that Territory. In pursuance of the act of Congress of May 2, 1890, c. 182, 26 Stat. 81, that Indian reservation was attached to Canadian County for judicial purposes, and by an act of March 5, 1895, of the territorial legislature, the authorities of any county to which any reservation had been

Counsel for Wagoner.

attached for judicial purposes were authorized to assess taxes upon any cattle or other personal property kept or situated within such reservation. The petition alleged that, in pursuance of the said act, the defendants were proceeding to assess and collect taxes for the years 1892 to 1895, both inclusive; that, for several reasons set forth in the petition, the said act of March 5, 1895, was invalid, and that said defendants were proceeding without warrant of law. To this petition a demurrer was filed, which was overruled, and thereupon the defendants filed answers, admitting that they were proceeding to levy and collect taxes as complained of in the petition, and alleging that their action in the premises was in pursuance of a valid statutory enactment of the territorial legislature.

An agreed statement of the facts was filed, and the cause was submitted to the court upon the petition, answer and statement of facts, and thereupon the court found that the defendants were fully authorized by the laws of Oklahoma Territory to collect from the petitioners taxes for territorial and judicial purposes for the year 1895 only, but that they were without authority to collect from the petitioners taxes for county, township or other than the territorial and judicial purposes. It was, therefore, decreed by the court that the defendants were authorized and permitted to collect those parts of the tax which were for territorial and judicial purposes for the year 1895 only, and enjoined them from collecting any part of the taxes which were for county, township or other than territorial or judicial purposes, and no taxes whatever for the years 1892, 1893 and 1894.

From this decree both parties appealed to the Supreme Court of the Territory of Oklahoma, which, on September 4, 1896, affirmed the decree of the District Court.

From that decree of affirmance both parties were allowed an appeal to this court by the Chief Justice of the Supreme Court of the Territory.

Mr. A. H. Garland and *Mr. R. C. Garland* for Wagoner and others.

Mr. Fred. Beall, *Mr. Amos Green* and *Mr. C. M. Green* for Evans and others.

Mr. Justice Shiras, after stating the case, delivered the opinion of the court.

The appeal of Wagoner and others, owners of cattle kept by them on the Indian reservation attached to Canadian County, brings up the same questions which were considered and determined by us at the present term in the case of *Thomas* v. *Gay*, 169 U. S. 264.

That was an appeal from the Supreme Court of the Territory of Oklahoma, involving the validity of the territorial act of March 5, 1895, c. 43, which subjected cattle, kept and grazed in any unorganized country, district or reservation, to taxation in the organized county to which said country, district or reservation is attached for judicial purposes, and it appears in the present record that the Supreme Court of the Territory regarded that case as identical in principle with the present one. Our examination of the records in the two cases has brought us to the same conclusion.

We therefore deem it unnecessary to again discuss at length questions so recently disposed of. The main contentions are that by reason of the treaty relations existing between the United States and the Indian tribes resident on the reservations it is not competent for the territorial legislature of Oklahoma to subject cattle within those reservations to taxation, even although such cattle are owned by persons other than Indians; and that the legislature of Oklahoma cannot validly empower the authorities of an organized county to tax personal property situated in a reservation attached to such county for judicial purposes.

In *Thomas* v. *Gay* it was held that there was nothing in the treaties between the United States and the Indians occupying these reservations which disabled the United States from bringing the reservations within the limits of the Territory of Oklahoma; that taxing personal property of persons other than Indians, and situated within the reserva-

tion, did not impair the rights of person or property pertaining to the Indians; and that the taxation of cattle kept for grazing purposes upon the reservations, under leases duly authorized by act of Congress, was not a violation of the rights of the Indians, nor an invasion of the jurisdiction and control of the United States over them and their lands.

No additional fact is presented to distinguish the present case from that one, in the particular now under consideration, except that the United States authorities made it a condition on which the owners of cattle should have a right to obtain grazing leases from the Indians that they should employ Indians in herding their cattle. It is said that the purpose of that condition was to alienate the Indians from their tribal relations and to incline them to peaceful pursuits. Such may have been the object, but we are unable to see that such a clause in these grazing leases has any bearing on the power of the Territory to exercise the power of taxation. It is, indeed, contended that to permit the Territory to tax the cattle would tend to discourage the making of such leases, and thus deprive the Indians of the advantages coming to them. This seems to us too indirect and far-fetched an incident to affect our conclusions.

In *Thomas* v. *Gay* it was further held that the power to legislate delegated to the territorial legislature included the right to pass and enforce laws for the assessment and collection of taxes; that the act of March 5, 1895, was a valid enactment, under which it was competent for the taxing authorities of an organized county to levy and collect taxes on personal property situated within the attached reservations, and belonging to other persons than Indians.

These considerations cover and dispose of the contentions urged on behalf of the owners of the property taxed, and their appeal is accordingly dismissed.

It remains to consider the appeal of the taxing authorities of Canadian County.

They object, in the first place, to that portion of the decree below which restrains them from the collection of taxes for the years 1892, 1893 and 1894. They point to a provision

contained in the act of March 5, 1895, enabling the special assessor to assess or reassess property that at any time has, by oversight or negligence, or for any other cause, escaped taxation; and they contend that the act of 1895 was an amendatory statute, and intended to cure a supposed defect in the then existing laws, and cases are cited in which it has been held that such curative statutes can have a retrospective effect, and enable the authorities to assess and collect taxes on property which should have been theretofore assessed.

It is sufficient to say that, prior to the passage of the act of March 5, 1895, there existed no power in the authorities of Canadian County to tax property within the attached reservation. Such authority was first given by that act, and could only be validly exercised on property subjected to its terms after its enactment.

Another objection on behalf of the county officers to the decree below appears to us to be well taken. It respects that feature of the decree which restricts the collection of taxes for the year 1895 to those imposed only for territorial and judicial purposes, and forbids the collection of taxes imposed for county purposes.

The same question arose in the case of *Thomas* v. *Gay*, and the conclusion there reached, upon an examination of the authorities, both state and federal, was, that it cannot be maintained that those whose cattle are within the protection of the laws of Oklahoma, but are situated on a reservation, receive no benefit from the expenditures of public moneys in the organized county to which the reservation is attached. Cases cited, wherein the power of municipal organizations to tax property outside of their boundaries has been denied, are not applicable when the power is conferred by a general law, enacted by a legislature having jurisdiction over the subject. Nor are taxes, otherwise lawful, invalidated by the allegation, or even the fact, that the resulting benefits are unequally shared.

The appeal is sustained in this particular, and the decree of the Supreme Court of the Territory is reversed, and the cause remanded to that court with directions to reverse

the decree of the District Court in so far as it restrains the county authorities from collecting taxes for county purposes for the year 1895, *and to affirm the rest of that decree. The costs in No.* 252 *to be paid by the appellants, and in No.* 262 *by the appellees.*